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A Brief Survey of English Constitutional History

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BY

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Introduction

Few subjects of study are of greater practical importance at the present moment than English constitutional history. For English constitutional history tells the story of how, by gradual stages and through many vicissitudes, a workable method of democratic self-government was brought into existence, for the first time on earth, by a politically minded nation. Now, far and wide throughout the world to-day the most crucial struggle in the arena of public affairs is that which is being waged between democratic self-government and 'direct action' of one sort or another—that is to say, between the system whose active principle is the rule of the majority and one or another system, be it Bolshevist or Fascist, in which militant minorities impose their will upon subject multitudes. It is of vital importance that those who see in representative institutions of the Parliamentary type the best hope of the peaceful evolution of mankind should study the process by which these institutions were established among the pioneer people of England.

Further, even among nations which have accepted the democratic principle serious differences of opinion and practice exist in respect of the mode of its application. Some prefer the Cabinet system

of government, others the Presidential; some work with large homogeneous Parties, others with small kaleidoscopic Groups; some have single-chamber legislatures, others bi-cameral; and so on indefinitely. In examining and criticizing these numerous and important divergencies it is well to take the English Constitution as the norm, and to ask when and why the others—most of which were directly or indirectly derived from it—came to develop different features. The study of origins is an indispensable preliminary to the determination of values.

The systematic investigation of English constitutional history began some three hundred years ago, during the struggle which broke out between the autocratic Stuart kings and their intractable Parliaments. Both sides appealed to precedent, the outraged monarchs urging that they asked no more than to be allowed to exercise the prerogatives which their Tudor predecessors had employed without demur, the resistant Parliamentarians asserting that they demanded from their kings no larger privilege that had been freely conceded to their forerunners under the house of Lancaster. The Chancery lawyers on the one side and the Common lawyers on the other side ransacked the records of the past, and laid bare the bases of the English administrative system. Of course, constitutional history, studied in such circumstances and under such conditions, inevitably lacked the impartiality and finality which calm, patient, and scientific examination alone can

give. The legal scholars of the seventeenth century were advocates, not judges. They looked for facts which would strengthen their cases, and they tended to ignore or depreciate such as told against them. Bacon and Cowell, for instance, turned unperceptive eyes upon data which did not serve to support the cause of absolute monarchy, while Coke and Selden were quick to discern only such features of the past as harmonized with the political programme of the Parliamentary party.

The partisan character of constitutional history clung to it throughout the seventeenth and eighteenth centuries. In so far as such writers as Burnet or Addison touched upon matters relating to the machinery of government or the distribution of political power, they did so in the interests of the Whigs. The far fuller disquisitions upon administrative affairs which flowed from the pens of Blackstone and Hume were dedicated to the cause of the Tories. The first detached and impartial studies of the English Constitution came from foreigners. Montesquieu devoted a notable section of his *Esprit des Lois* (1748) to an exposition of what appeared to him to be the outstanding features of the form of government which prevailed in this country under the Hanoverians. De Lolme, an exile and refugee from Geneva, published a more formal treatise on *La Constitution de l'Angleterre* (1771), which had a great vogue both on the Continent, where it had a powerful liberalizing influence, and in this country, where numerous English editions (1772–1838) were

called for. But if Montesquieu and De Lolme were free from the bias of English party politics they suffered on the other hand both from an imperfect acquaintance with their subject and also from a tendency to indiscriminate eulogy. The English Constitution, even in its unreformed eighteenth-century shape, was so far superior to the corrupt autocracy of France or the chaotic republicanism of Switzerland that observers from these countries tended to overlook the enormous defects which were beginning to manifest themselves to English critics.

Among the first of English critics to become acutely conscious of the defects of the Constitution was Jeremy Bentham. In a long series of works extending over nearly sixty years (1775–1832) he applied the principles of his utilitarian philosophy to the exposure of the iniquities of the Hanoverian oligarchy and to the advocacy of radical democratic reform. His powerful influence culminated in the Reform Act, which signalized the year of his death. This influence, however, was by no means the only one which tended to that end. The French Revolution had stimulated much political thought. In particular, Thomas Paine with his doctrine of the Rights of Man and William Godwin with his scheme of anarchic communism were formidable assailants of the order which Montesquieu and De Lolme, in common with Hume and Blackstone, had regarded as final and perfect. More moderate in his advocacy of reform was Lord John Russell, who in 1820 published *An Essay on the English Government and Con-*

stitution from the Reign of Henry VII to the Present Day. He considered that to return to the Whig position of the early eighteenth century was the urgent need of the time. This, however, did not appear sufficient to George Brodie, who two years later issued a *Constitutional History* specially devoted to a study of the era of the Puritan Revolution. It was a furious attack upon Hume and the Tory view of the seventeenth century, and it threw the study of English administrative history back into the fiery furnace of controversial politics.

The man who rescued it and placed it once for all upon a scientific basis was Henry Hallam, who in 1827 published his voluminous *Constitutional History of England*, covering the period 1485–1760.[1] The judicial tone of the book is its most marked feature. It speaks with the authority of the Last Day, and utters judgments from which there appears to be no appeal. Macaulay, discussing it in the *Edinburgh Review*, said, "On a general survey, we do not scruple to pronounce the *Constitutional History* the most impartial book that we ever read," and a little farther on he added, "For cold rigid justice—the one weight and the one measure—we know not where else we can look." True, what Macaulay called 'impartiality' was, as a matter of fact, the deep-seated prejudice of a Whig politician—a prejudice

[1] Hallam had given a chapter, the eighth, of his *History of Europe during the Middle Ages* (1818) to a description of the growth of the Constitution up to 1485.

which Macaulay shared so fully that he was unaware of its existence. But it was an unconscious prejudice; it represented the convictions which Hallam's sober judgment had reached in the sphere of practical affairs, and it did not occur to him to revise these convictions or set them aside when he touched on the politics of past generations. To him these were not prejudices, but elementary truths. Tory readers naturally did not see Hallam's work in the same light as Macaulay. Southey, for instance, criticizing it in the *Quarterly Review*, spoke angrily of "its acrimony and its arrogance, its injustice and its ill-temper." His strictures, we can now see, were entirely unwarranted. Whatever defects Hallam may have had, they were not defects of spirit or temper. He had the scientific mind, and he divested himself, as far as it is possible for a man to do so, from the passions of the partisan. He laid firm the foundations for the scholarly superstructures of his successors.

Among the more notable of these successors was Sir Francis Palgrave, who, on the basis of a pioneer study of the early national records, published in 1832 his study of *The Rise and Progress of the English Constitution*. The work was merely a colossal fragment which came to an abrupt termination with the Norman Conquest. It expressed, however, some provocative opinions, as, for example, the opinion that the Roman element in the English Constitution was an important one, and, on the other hand, that the Norman element was not. These opinions gave rise

to much controversy: but it is to be noted that it was academic controversy relating to matters of pure scholarship, and not political controversy bound up with current affairs. It was realized that the questions at issue could be settled only by scientific research, and consequently men like Benjamin Thorpe in his *Ancient Laws and Institutions of England* (1840) and John M. Kemble in bis laborious *Codex Diplomaticus* and his *Saxons in England* (1845) traversed Palgrave's ground and rejected his arguments. They reasserted the dominance of the Teutonic element in the English Constitution. Their well-documented views had considerable influence not only in this country, but also in Germany, where they nicely accorded with the rising Teutonism of the native historians. From Germany tbeir doctrines returned, reinforced and enlarged, to England to stimulate and guide the labours of E. A. Freeman, William Stubbs, and John Richard Green.

Freeman's massive and many-volumed *History of the Norman Conquest* began to appear in 1867, and its publication was extended over the twelve following years. The first volume was devoted to a survey of the Anglo-Saxon period, and its third chapter contained the fullest and most satisfactory description of the early English Constitution which up to that date had been written. This sketch was supplemented in 1872 by a slight, popular book on *The Growth of the English Constitution*, in which the subsequent development of Anglo-Saxon institutions was summarily traced. Fre man entirely repudiated

the presence of Roman elements in the Constitution, and he considered that even the Norman Conquest was a mere passing episode which did not seriously disturb the Anglo-Saxon foundations of the English polity. Both these opinions were in the main held and defended by Bishop Stubbs. But Stubbs brought to their elucidation and defence an incomparably vaster armament of erudition and research than had been employed by Freeman. As editor of a number of volumes in the Rolls Series—beginning in 1864 with the Itinerary of Richard I and ending in 1887 with William of Malmesbury—he acquired an unprecedented acquaintance with the sources of medieval English history. In his *Select Charters* (1870) he presented to students a wonderful collection of excerpts which served as materials for some sort of original investigation of primary authorities. Finally, in his great *Constitutional History of England to* 1485 (1875–78), he collected all the stores of his colossal learning and embodied them in a masterly treatise the like of which this country had never before seen.

So far as investigation into the origin and early development of the English Constitution is concerned, subsequent research has almost necessarily taken the form of criticism and revision of Stubbs. Seebohm in his *English Village Community* (1883) has revived the theory of the persistence of Roman influence throughout the Anglo-Saxon period; Vinogradoff in a series of monographs suggested by Russian analogies has compelled a modification of

Stubbs' views on the manorial system, villeinage, and folkland; above all, F. W. Maitland, in his *History of English Law* (1895), *Doomsday and Beyond* (1897), *Township and Borough* (1898), and other works, has made priceless additions to our knowledge of the primitive English polity.[1]

Meantime our acquaintance with the more modern evolution of the Constitution has been carried forward from the point where Hallam left it by such writers as Erskine May, Walter Bagehot, Rudolf Gneist, William Anson, and Edward Dicey.

The task of reading and digesting the massive and erudite works above enumerated is, of course, one which specialists alone have the time and energy to undertake. Even for them many years of arduous, if fascinating, toil are necessary before they can feel that they have acquired a mastery of the essentials of these subjects. Hence for the pupil in the school, the student in the college, and the man in the street some sort of a convenient compendium is imperatively necessary. Snch a compendium Professor D. G. E. Hall has provided. He has read widely; he has thought deeply; by successful teaching he has learned how most effectively to present his scholarship to the uninitiated. With admirable lucidity he expounds the approved results of recent research; with masterly precision he makes clear the process by which the present system of representative democracy has grown up in England.

[1] A useful general summary of results is presented in Petit-Dntaillis' *Studies Supplementary to Stubbs* (1908).

Most cordially do I commend his book to both students and teachers, proud that a former pupil of King's College should have attained his present high position in the university world and should have produced so useful a text-book.

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July 1925

A Brief Survey of English Constitutional History

CHAPTER I

ENGLAND BEFORE THE NORMAN CONQUEST

§ 1. **Where does English Constitutional History begin?** The first problem that confronts every student of this snbject may be expressed by the question, Where does English constitutional history begin? Are we to go back to the Roman occupation of Britain for the origin of English institutions, or to the descriptions of the Germans given us in the pages of Cæsar and Tacitus? This is a qnestion which agitated the minds of several generations of historical scholars. The Old Teutonic school, whose leading lights were Kemble, Freeman, and Stubbs, declared that everything of value in tbe English Constitution sprang from a Tentonic origin. According to their view, when the Angles, Saxons, aud Jutes couquered Britain in the fifth and sixth centuries A.D. they so completely killed off, euslaved, or drove ont the British population that its civilization and institutions died a sudden aud violeut death throughout most of the country, and the Germanic type of society described by Tacitus in his *Germania* came in to take their place.

The township, the smallest unit of Anglo-Saxon local government, they identified with the German *vicus* described by Tacitus; the 'hundred' and the 'folk' too they identified with larger units of the Germans.

This view, which was almost universally held throughout the latter half of the last century, was strongly opposed by the Romano-Celtic school of Seebohm and Ashley, perhaps better known as the Manorial school, since their main object was to prove that the medieval manorial system was directly descended from the Roman villa. The Teutonic conquest, they said, did not greatly affect the system of land cultivation. Teutonic lords supplanted Romanized Celtic ones. The actual cultivators remained unchanged. Thus Roman institutions continued to exist, though under different names. The Saxon shire was really the Roman *territorium*, the borough the *municipium*, and the gild the *collegium*. Rome, they held, had so stamped her civilization upon the Britons that they preserved it and handed it on to the barbarian invaders, who, so far from exterminating the Britons, were but a conquering minority settled among a numerically superior Celtic population.

Modern historical writers are extremely wary of using Tacitus's idealized picture of the Germans to help them in solving this problem. And it is exceedingly doubtful whether the highly organized Germans of the Rhine regions afford us many clues regarding the institutions of the much more back-

ward Angles, Saxons, and Jutes, about whom Tacitus must have known almost nothing. On the other hand, there is no evidence of any Roman influence upon English institutions before the Christian mission of 597. Roman civilization in Britain does not seem to have spread beyond the towns, the great roads, and the villa settlements of the South. Outside the walls of the towns Celtic tribal life probably went on undisturbed, even where there was a landed aristocracy of Romans. Britain was the last province of the Roman Empire to be conquered and the first to be abandoned, and in the interval between the departure of the Roman garrisons and the first Jutish settlement there was a strong revival of Celtic civilization.

As to the question of extermination, there seems to be good reason to think that the conquest was less rigorous than the Old Teutonic school asserts. Stubbs, indeed, noted an increasing degree of survival of the conquered peoples toward the West, and it would seem that in the lands subdued after the initial settlements were made there was a considerable survival of Celts. Nevertheless, they existed as a remnant, no longer as organized peoples. It is a striking fact that the main features of Anglo-Saxon England were essentially Teutonic. The language of the invaders prevailed in England, whereas in France, Spain, and Italy Romance languages proved stronger than the dialects of the German conquerors. In Britain, too, Christianity, introduced by the Romans, was almost completely

overwhelmed by Anglo-Saxon paganism. Even more conclusive evidence comes from the fact that Old English institutions and customs such as the moot, the joint responsibility of the kindred before the law, wergild ('blood fine'), and the classification of society into noble, free, and half-free, were obviously transplanted from Germany. And the later developments of the tithing, the hundred, the shire, and the burgh had clearly no connexion with Roman Britain.

§ 2. **Anglo-Saxon England.** Britain was conquered by small bands of invaders, each under its tribal leader and with its own particular set of customs. These settled down in separate localities, where they remained from generation to generation, governing themselves by unwritten tradition. At first the binding force among them was that of the kindred. Thus each man's rights, status, and obligations came to him by inheritance. The larger group also to which they belonged, the folk or nation, was regarded as springing from a common ancestry. An offence against the individual would bring the enmity of the kin of the wronged man upon the family of the culprit. The kin of the murderer must pay the blood fine (wergild) to the family of the murdered man, or the latter family could wreak its vengeance upon any member of the former (the 'blood feud'). No man's oath would be accepted by the moot unless he was adequately supported by his kindred.

In the course of time, however, the long wars of

the period of settlement weakened the kinship bond, already strained by the migration. A new bond, that of locality, took the place of blood relationship. Men's minds became local. Custom became local, and the habits and institutions of each locality inflexibly ruled there to the exclusion of all others. In the absence of town life institutions were almost exclusively connected with the tenure and cultivation of land or with crime. There was very little intercourse between one locality and another, save through war. Hence in the early Anglo-Saxon period we must not expect to find an organized central Government with any real power to compete with local custom.

Kingship, indeed, among the German tribes on the Continent was almost entirely a war-time arrangement. "War begat the king" ran the old saying. The long period of warfare against the Britons made kingship a permanent institution among the German invaders of Britain. But the power of the king was very indefinite and depended in every case upon the personal character of the man wielding it. A weak man would be overruled by his 'Witan,' a strong man would in every case carry his people with him. Neither king, Witan, nor freeman, however, possessed sovereign power in Anglo-Saxon England. Everything was decided and everybody was bound by the rigid bonds of custom. Custom everywhere dominated. It was regarded as being divine in origin: an emanation of the Will of God. No one might question it; no one might alter it. It could be declared only by the

wise men of the community. All matters of right and law were decided solely by custom. The idea that the Government could make law did not exist; there is in fact no Anglo-Saxon word which corresponds to the word 'law' in our modern usage. So-called Anglo-Saxon laws were simply declarations of folk-right—*i.e.*, of existing custom. Such were the earliest English written laws which have come down to us—the laws of Ethelbert, King of Kent, who was converted to Christianity by the mission of Augustine in 597. Professor Maitland was of opinion that they were "the earliest laws ever written in any Teutonic tongue." The laws of Alfred the Great, too, were declarations of custom. They contain nothing new. The utmost 'legislative' power that Alfred assumed was to select certain customs and to declare that he would enforce these in preference to others. When a king in the Anglo-Saxon period is called a 'lawgiver' he was far from being a 'legislator' in the modern meaning of the term.

Under such conditions there existed in the Anglo-Saxon times very little need for a 'constitution' as we now understand it. Almost everything was decided locally in accordance with local custom. Thus the chief institutions were local ones. The smallest of these was the township, which must not in any way be confused with the word 'town.' It was a rural division, the inhabitants of which were probably originally bound by either the tie of kinship or of common service to a leader. The freemen

would meet together in the 'tun-moot' to decide —always in accordance with inflexible custom— questions of property and the working of land. The township also had certain police duties in respect of the apprehension of criminals, and could be fined for neglect of these. At a later date in English history it sent its representatives—the 'reeve' and four best men—to the more important 'moots' of the 'hundred' and the 'shire.'

The hundred was a larger division which included several townships. The view was once held that this was a primitive institution of the German invaders before their settlement in Britain. The German tribes were thought to have established themselves in the country in groups of one hundred warriors, and hence the district settled by one of these groups came to be called a 'hundred.' Modern research, however, has established that the division was of late origin, and grew up out of the tithing system. It seems to have had no connexion with the German tribal military organization, but came into being for the better detection and capture of criminals. When the bond of locality supplanted that of kindred, heads of households were grouped together into tythings (groups of ten), each group being made responsible for the maintenance of order in its midst and for crimes committed by its members. A hundred was a group of ten tythings. It held its moot twelve times a year. This court was the normal police-court of later Saxon England, and was more

frequently used than the shire court. The earliest form of hundred was a voluntary association, a frith-gild[1] or brotherhood sworn to maintain the peace and to co-operate in bringing criminals to justice. The royal blessing was accorded to this form of organized self-help, especially in the later Saxon period. King Edmund in the tenth century made it a national institution obligatory upon the whole country. Edgar the Peaceful gave its court formal status and defined its duties and procedure.

The largest administrative divisions of local government in England at the present day are called counties or shires. The origin of many of these is to be found in the independent states formed by the Anglo-Saxons when they first settled down in Britain. At first there existed a considerable number of these small states, each governed by its own 'king.' We know that Kent, Sussex, Middlesex, Surrey, and Essex were at one time such kingdoms. Norfolk and Suffolk, too, were originally the kingdoms of the North folk and South folk of the East Angles. Gradually, however, as smaller states were conquered or in other ways absorbed by larger or more powerful ones, the number of independent kingdoms was reduced to what historians have called the Heptarchy, and finally to the triarchy of Northumbria, Mercia, and Wessex. Then came a struggle for supremacy, which resulted in the final

[1] A.-S. *frith* ('peace') has a meaning similar to that of the 'king's peace' of later times.

victory of Wessex. As the larger kingdoms took shape the folkmoot, originally the meeting of the whole folk, became a provincial assembly, and the territory occupied by the folk an administrative division under a governor. Various names were used for this territorial unit. It was called 'lathe' in Kent, 'rape' in Sussex, and 'scir' in Northumbria and Wessex. Its governor, called sub-king by the chronicler Bede, but more often referred to as 'ealdorman,' must in many cases have been a descendant of the former royal house. His power, however, was considerably limited by the appointment of a 'reeve' to act as the king's steward and look after the royal interests in general.

After the conquest of the Danelaw the West Saxon kings, in reorganizing their dominions, applied this shire system to the whole country. The shire-moot was thus the highest local court in the kingdom. It was presided over by the sheriff (shire reeve), assisted by the ealdorman and the bishop. According to the law of Edgar the Peaceful, it met twice a year. Like the other local moots, it was an assembly court. All lords of lands, all public officers, and the reeve and four men from each township were supposed to be present.

The Danish invasions brought into existence another feature of Anglo-Saxon government, the borough. A *burh*, originally a boundary dike round a privileged building, was a fortified town in the days of Alfred the Great. West Saxon defence against the Danes was organized in such

settlements under royal reeves, often known as high-reeves. During the worst period of fighting the borough became the chief centre of government throughout Mercia and Wessex; the shire-moot apparently ceased entirely to function. Boroughs were also used to hold down territory as it was reconquered from the Danes. Thus the reconquest of Mercia was accompanied by the establishment of the 'five boroughs'—Derby, Nottingham, Stamford, Leicester, and Lincoln. When the time came for the reapplication of the shire system the memory of the old tribal kingdoms had been lost in many districts, particularly in Mercia. Where this was so the West Saxon kings seem to have formed shires by arranging territory around a convenient borough, which became the centre of the organization and gave its name to the shire. Four out of the 'five boroughs' provide good examples of this. The borough retained its own court and administration, though subordinate to those of the shire. It was an urban area surrounded by its own fields; its burgesses were engaged in agricultural pursuits; but as every king's thegn had his own borough residence, they were the real controllers of borough affairs. In this respect borough and shire were similar. The shire-moot of later Saxon history was an assembly of thegns. The smaller freemen had ceased to perform this burdensome and much-disliked duty. Attendance at court was an obligation to be evaded if possible, not a jealously guarded privilege.

The modern State takes charge of the whole process of litigation. Nothing like this existed in the Anglo-Saxon period. The plaintiff summoned his opponent to court, and in some cases executed for himself the judgment of the court. The procedure in court was very elaborate. Its most important feature was the oath. The plaintiff swore his fore-oath, the defendant his oath of rebuttal; and the court decided which side should make proof. In what we should now call civil cases this usually took the form of another oath by the party awarded the proof, assisted by compurgators (oath-helpers), who swore that they believed his oath. If the prescribed number of oath-helpers was produced, and the proper ritual performed without hesitation or mispronunciation, the case was won. In cases of serious crime one or other form of ordeal was commonly used instead of the second part of the oath ritual. The system was well suited to small primitive communities where every man's character was well known and there was a genuine fear of the vengeance of heaven upon the oath-breaker. The penalty for a false oath was the loss for ever of one's oath-worthiness and even refusal of Christian burial.

The king as the leader of his people was advised by a council known as the Witan, or assembly of wise men. In principle this also was a folkmoot, not essentially different from the local ones. But when kingdoms became too large to hold mass assemblies of freemen only a few people of great

distinction would be summoned to its meetings. It had no official membership and no definite constitution. Usually its composition would depend upon the will of the king, though certain great men by virtue of their position would inevitably be summoned to its meetings. But although its members were not elected by any form of popular vote, nevertheless as a body it was considered to represent the legal wisdom of the community and to stand for the nation in making its decisions of policy. Among a people which regarded law as unchanging custom such a body could have no legislative powers as we should understand them to-day. But no king who issued collections of dooms (literally 'judgments,' 'decisions'—the Anglo-Saxon equivalent of man-made law) would do so without consulting his Witan. Law was the inheritance of the folk from its dim past. No king, therefore, would lay down the law of his own authority. In practice neither king nor Witan was regarded as superior in dealing with the law, and the law was superior to both. A strong king, of course, would dominate the Witan by securing the attendance of a preponderating number of his own thegns. As the powers of neither king nor Witan were defined, everything must have depended upon the play of personality and the force of circumstance. Occasionally a difficulty over the succession to the throne would be resolved by the Witan. There was no fixed rule of succession as among the members of the royal family, and any

member of outstanding ability might be chosen, should occasion demand. Alfred the Great, for instance, was appointed over the heads of his elder brother's sons. There were even cases of deposition by the Witan. But no constitutional rule on this subject existed, nor did such procedure give to the Witan any constitutional authority above that of the king. Whenever the Witan acted in this way it did so on behalf of the people as a whole, and it always took the obvious course dictated to it by responsible opinion.

The Anglo-Saxon monarchy developed very slowly from its primitive beginnings. In the tribal stage the king was the war leader and in a vague sort of way the representative of the folk. He also had certain magical elements as the descendant of the pagan gods. The introduction of Christianity, by destroying these elements, somewhat weakened his prestige. The actual powers of the king as such were extremely slight. As we have seen, he could not make law. The peace was not his. Acts now regarded as offences against the peace were then acts of private wrong, and hence were not punishable by him, unless committed within his palace or against his household. He was, indeed, the defender of the nation and of its law, but custom hedged him in at every step, and the individuals composing his people were in no sense his subjects. The idea of the king as the natural lord of all Englishmen was hardly accepted even by the time of the Norman Conquest. There

was no taxation, even in the time of Alfred the Great. In fact, as a recent writer [1] has expressed it, he "appears less as a king than as a great country gentleman, drawing his rents from his estates and spending them magnificently upon good works and a great household."

When the successors of Alfred conquered the Danelaw and raised the royal dignity to that of *totius Brittaniæ Basileus*, the power of the Crown increased more rapidly; but even so, judged by modern standards, the strongest Anglo-Saxon monarch had little real control over his kingdom. Men's loyalties remained supremely local, bounded by their village or at the most by their shire. National consciousness there was indeed; but it was the provincial nationalism of Northumbria or of Mercia. Politically there was no real unity. Only in the organization of the Church, with its chief centre at Canterbury, was there held up to men in some slight degree an ideal of something greater than their small locality. Everything depended upon the personality of the king. There was no machinery of government. The royal court was purely domestic in nature, with the king's chaplains acting as his secretaries. Still, by the time of the Conquest certain big steps forward had been taken. The shire and hundred system had been applied to the whole country. A rudimentary idea of the king's peace existed. The

[1] J. E. A. Joliffe, *The Constitutional History of Medieval England* (1937), p. 53.

more important criminal cases had become a royal monopoly. Furthermore, the sheriffs constituted a powerful body of royal servants. It is easy to over-estimate the weakness of the pre-Conquest kings. They were not strikingly weaker than other monarchies of their time, nor than the Norman monarchy which succeeded them. The chief weakness lay in the disunity of their kingdom.

§ 3. **The Development of Lordship.** The Anglo-Saxon period used to be represented as one of social and economic stagnation with little progress worthy of record. People were, of course, almost incredibly conservative in outlook. Tradition held firm sway in every department of life. Nevertheless change there was, and in the course of time a complicated social structure took the place of the primitive communities we first meet with. The Old Teutonic school liked to think of English history as a sort of evolution *from* small communities of *free* and equal tribesmen *via* the stage of feudal lordship and servitude to the modern democracy of 'one man, one vote.' This more disillusioned and better-informed age is wary of such simplifications. When we first meet the Angles and Saxons on English soil they have already developed a system of castes. There are nobles, ordinary freemen, and slaves—'eorls,' 'ceorls,' and 'theows.' The noble's wergild is twelve hundred shillings: he is a *twelfhynd* man. The ordinary freeman's is two hundred shillings: he is a *twyhynd* man. There is also a class of half-free cultivators whose wergild is half the freeman's.

These differences are especially noticeable in the case of the possession of land. The 'hide' as a measure of land probably originated as the amount required by a family for its maintenance. It varied in size from eighty to a hundred and twenty acres. Before the end of the seventh century we find individual men possessing as much as five hides, while others have less than a quarter of a hide. The five-hide man out of his plenty maintains a number of dependants. He also guarantees their legal standing. The dependant takes his patron 'to *hlaford* and to *mundbora*'—*i.e.*, as bread-giver and guarantor of legal standing. Thus emerges lordship and vassalage. In an age of constant warfare many wandering strangers sought the service of such patrons, and a new class, the *gesithcund*, arose. The landless freeman in the same way would seek a lord. There was nothing feudal in the relationship. "No kin is dearer to a man than his lord," said the *Anglo-Saxon Chronicle*. The tie was a personal one.

This form of lordship was very widespread as early as the eighth century. In many villages the ordinary freemen were becoming, in one way or another, dependent upon what we may call the landed class. As the importance of the kindred declined and the tie of locality took its place territorial lordship naturally tended to strengthen its hold upon the lower classes. The lord and his family withdrew from agriculture and specialized in military pursuits, building for themselves fortified

burhs. When the great Danish invasions occurred the weaker men were forced to seek the protection of the stronger, and the practice of commendation, or the *hold-oath*, became universal. By this means a man became vassal to a lord by the surrender of his land, and acquired for himself, his dependants, and his land the protection of his lord. Again there was nothing feudal in this relationship, if we regard it from the strictly legal point of view. The vassal could dispose of his lands by gift or sale during his lifetime or by testament at his death. This was contrary to the whole spirit of the *feodum* (*i.e.*, feudal fief).

In practice, however, this free land-right was possessed only by the substantial landholders. The mass of the peasants gradually sank into a position little better than serfdom. Anglo-Saxon law probably never held them to be actually bound to the soil. But the poorer peasant, often with no land in his own right, and using stock loaned him by his lord, was not in a position to avail himself of his legal privilege "to go where he would." Two factors in particular promoted the spread of economic servitude—the system of Danegeld and the tithe demanded by the Church. The incidence of the former—a tax on every hide—was especially heavy, and forced many peasants to surrender their land to lords.

This movement was accompanied by a corresponding growth of seigneurial jurisdiction. The later Saxon kings were accustomed to grant full

administrative rights of the hundred to religious houses or lay magnates. Land over which such privileges were conferred was known as *bokland*, because of the book or charter in which the grant was inscribed. And a further type of private jurisdiction arose through royal grants of sake and soke together—*infangentheof*, or justice over thieves caught redhanded. 'Sake' was the right to hold a court. 'Soke,' meaning suit, consisted in a variety of executive duties. In this way the old aristocracy of birth, the eorlish men, was replaced by a nobility of service, the thegnage. The village tended to become a manor, and the ordinary ceorl lost most of his legal status. He was forced to attend a private court. He is described in Domesday Book as either a 'villein' or a 'sokeman.' If the former he was bound to the soil; if the latter, though possessing his own land-right, he would be under the jurisdiction of a holder of rights of sake and soke.

There was nothing systematic in all this change. Everywhere the utmost variety of conditions prevailed. Villeins formed a majority of the population in the North, but they enjoyed greater freedom and lighter service than in Mercia. Sokemen prevailed over villeins in East Anglia. Kent had its own system of *gavelkind*, whereby holdings were equally divided at each generation and land-right was free. The custom known as Borough English gave much freedom to the peasants of Sussex and Hampshire. The lowest forms of villeinage were to be found

in parts of Wessex and Mercia. Within these larger areas each of the smaller districts had its own special customs. Lordship and dependence were universal by 1066, but they had grown up in a completely haphazard fashion. Disunion was the order of the day, and the differences of speech and outlook in the different parts of the country made the achievement of real national unity from within an almost hopelessly difficult task. But local administration was stable and healthy; and had William the Norman not invaded the country in 1066 the Kingdom of England might indeed have survived.

CHAPTER II

NORMAN ENGLAND

§ 4. **The Conquest.** Twice during the eleventh century was England completely conquered by the Northmen, or Danes. The first Danish conquest was made by Canute in 1016 after a terrific struggle with that fine hero Edmund Ironside, the son of Ethelred the Unready. Canute was no mere soldier; he was one of the greatest statesmen of his day in Europe. He attempted to check the tendency to disunion which we have noted in the previous chapter. But he found the task of maintaining effective control over his whole empire (which included Denmark and Norway) too great for one man. He therefore divided England up into great earldoms, for the sake of the better organization of each large division of the realm. In reality, however, his method only further increased the disunion of England. The great earls could offer more powerful resistance to the king than could the ealdormen of the shires, while in the personal feud which grew up between Leofric of Mercia and Godwin of Wessex the rivalry between two of the ancient kingdoms was revived. The great earls became practically independent princes when Canute's strong hand was removed by death in 1035. From that time until the second conquest in 1066 the

central power in England was almost completely eclipsed by the local independence of the earls. It was this fact which made the Norman Conquest possible. The force under Harold Godwinson which William the Norman defeated at Hastings was recruited from Wessex. English Mercia and the Danelaw were entirely apathetic, Northumbria violently hostile, to the cause of the last Saxon king.

The Norman conquest of England was not a national catastrophe. The newcomers were descended from the same viking hosts as had settled in England in the ninth century. True, they had adopted the French civilization and language. But while the fact that they did not differ racially from the people they had conquered made it easy for conquered and conquerors to amalgamate in the course of time, the extraordinary capacity for adaptability possessed by the Normans caused all differences to be obliterated within a remarkably short space of time. The new rulers did much to promote the unity of the country. They had none of the strong inborn local feeling that permeated the English peoples, and for that reason, like the British in India, they were the better able to combat the forces of disunion. It is not too much to say that the movement toward national unity in England would have progressed by much slower degrees had it not been for the Norman Conquest. The harsh, firm, impartial rule of the Conqueror and his sons literally crushed the native peoples together and made them conscious of a common feeling.

§ 5. Feudal Rule. With the election of William the Conqueror to be king by the "divided and dismayed Witan" the English kingship began an entirely new phase of its history. There was, however, nothing very revolutionary in the Witan's action. The elections of Canute and Harold were hard nuts to crack for anyone who held the theory that only members of the old royal West Saxon house were eligible for the kingly office. The fact that William should deem it worth while to secure election at the hands of the Witan is not unimportant, since it helped to keep alive the notion of the elective character of the monarchy. It was, indeed, a long time before the rule of hereditary succession by primogeniture became established. On William's death his second son, Rufus, was preferred before the eldest son, Robert. When Rufus was killed in the New Forest, although Robert was still alive, the youngest son of the Conqueror, Henry, managed to secure recognition. Again, on his death in 1135 the claims of his daughter Matilda were passed over in favour of the election of his nephew, Stephen of Blois. On the death of Richard the Lion-hearted his younger brother John was chosen king in preference to Arthur of Brittany, the claimant by strict hereditary succession. Thus as late as the end of the twelfth century primogeniture was not the recognized rule of succession. And until quite modern times a form of election constituted a part of the coronation ceremony.

Long before they came to England as conquerors the Normans had shown conspicuous ability as organizers and rulers. Their duchy of Normandy, we are told, was the best-administered province of France. Later on in the twelfth century the kingdom they founded by the conqnest of South Italy and Sicily became one of the best-ruled states of medieval Europe. William the Conqueror, who laid the foundations of Norman rule in England, was one of the ablest men of his age. He had not been slow to realize that the prevalent evil of his day all over Europe was the lack of strong central Governments to keep in check the growing independence of petty princes and feudal lords, who distracted the countryside with their private warfare and barbarized society by their rigid military dominance. Anglo-Saxon England, as we have seen, provided an excellent example of the evils resulting from a weak and nerveless central Government. It is not surprising, therefore, that William's chief endeavours were directed toward strengthening the royal power and enforcing order in the country.

As most of the laod had been confiscated from its English owners on the ground that they were rebels, William rewarded his followers by large grants of the conquered territory. The king, however, was regarded as being the supreme landlord of the kingdom. Thus, in return for these grants of land, each of the king's tenants, or 'baroos,' as they were called, agreed to pay him military service according to the special agreement made in each individnal case.

This usually took the form of a promise on the part of the baron to provide the king with a certain number of armed knights whenever the latter required their services. The few English nobles who were allowed to remain in possession of their lands also received them as grants from the king on similar conditions. Thus these men became feudal tenants of the king, owing him military service and homage. They in their turn let out their lands to other tenants, who owed them similar military service and homage. The former became known as the tenants-in-chief of the king, the latter as sub-tenants Very often if a tenant-in-chief owed, say, the service of ten knights to the king he would divide all or a part of his land into ten holdings, each of which he would allot to a sub-tenant on the promise of the latter to present himself for military service whenever required by his lord. An allotment of land (usually a 'manor') from which the services of one armed knight were due to a lord was known as a 'knight's fee.' It was not long before most of the land of England was parcelled out into knights' fees. These differed very much in size, because no uniform principle was observed in creating them. In every case they grew up as a matter of personal arrangement between lord and tenant.

In France the central Government was in William's day almost powerless before the great feudal tenants-in-chief, who forced their own tenants to be loyal to them rather than to the king, and behaved like independent princes. William

strove hard to check this centrifugal tendency in his new kingdom. From his Saxon predecessors he inherited the general fealty of the realm. It meant that loyalty to the king took precedence over loyalty to one's immediate lord. The Saxon kings had received it through the Witan. William summoned a great assembly at Salisbury in 1086 for this purpose, and in subsequent reigns the swearing of direct fealty to the king became a routine matter—with the single exception of Stephen's reign. The piecemeal conquest of the realm also strengthened the king's hands as against the great feudatories. The confiscated lands were handed out to the new landlords at various stages of the conquest, with the result that they received not compact territories, like the great earls of Saxon times, but scattered holdings in widely different parts of the country. Except for the palatine earldoms of Chester, Durham, and Kent, the title of earl came to denote a rank of nobility, and not an official position.

As the successor of Edward the Confessor[1] also the Norman king was the guardian of law and order throughout the realm. The Anglo-Saxon system for the maintenance of the peace was strong and stable, and it had become closely associated with the royal authority and the royal writ. The practice of the Norman kings was to grant the law of the Confessor to their English subjects, and to

[1] Harold had never been accepted as king by the whole realm; nor did the Normans admit his legitimacy.

allow the Normans immunity from it only where it might cause unfairness to them. The continuance of the old local courts and much of the Anglo-Saxon organization weakened the power of the feudatories and prevented the excessive feudalization of the Government, such as occurred in most other European countries. From the constitutional point of view there were only two important differences between the later Saxon and the Norman kingship: the universal landlordship of the Norman kings and the new bond of tenure introduced between them and their tenants-in-chief. In actual practice the Norman kingship was far stronger than its predecessor, or, for that matter, any other European Government of the time.

Opinions differ as to the effect of the Norman Conquest upon the English peasantry. Economic historians tend to regard it as a catastrophe, constitutional writers as merely a change of lords. The latter are able to show that ancient custom was strong enough to preserve the peasant's security of holding and the essentials of his material life. On the other hand, economists point out that the villein's labour services were vastly increased, especially after the Domesday Survey, while many freeholders were depressed into villeinage. The Norman lawyers strove to reduce everything to a uniform system. Thus while at the time of the Conquest there were many free villages without lords, though individual villagers acknowledged

various lords, the Normans sought to turn the vill (the Anglo-Saxon agricultural unit) into a manor by imposing a single lord over it. And the complicated personal relationships that had grown up with Anglo-Saxon lordship were swept away in favour of a single bond based upon land tenure. So it came about that the fact of being a tenant bound a man to attend his lord's court. And the Norman lord assumed that his lordship over land gave him the right to hold a court and compel the attendance of his tenants. The sort of jurisdiction thus assumed by the manorial courts is described in an early fourteenth-century document. It comprised the wounding of cattle, damage to standing crops by animals, trespass or damage to timber not involving the king's peace, assault not leading to bloodshed, debt under forty shillings, contracts and agreements made within the lord's power and even actions arising out of the land tenure of freeholders. At law the villein was the chattel of his lord. He had no *locus standi* in the king's courts. In legal documents he was sometimes described by the word *catalla*. He was not even a man to the Norman lawyer. On the other hand, an offence against a villein was regarded at law as an offence against his lord, and in that way a certain degree of protection was afforded him by the king's courts. His actual position was much better than his legal status would lead one to believe. Immemorial custom defined the nature of each man's tenure and laid down the services due from his tenement.

And no lord could eject his cultivators so long as they performed their due services. Manorial tenants also continued to take their share in the police work of hundred and tithing.

As feudalism continued to spread most of the towns came within its scope. In Norman times the majority of these were only larger agricultural settlements forming part of a feudal manor and owing villein services to a lord. In the course of time these services became particularly distasteful to the townsmen, and we find them powerful enough to combine to force their lords to accept a common fixed money rent in place of agricultural service. This was their first step toward independent status. With the twelfth century the towns begin to procure Charters of Liberties granting them large powers of self-government and self-taxation, and their members are designated by the proud title of 'freemen.'

At the time of the Norman Conquest the Church was one of the greatest landowners in England. Richly endowed by the accumulated benefactions of pious men for many generations, the bishoprics and greater monasteries each possessed lands and wealth equivalent to those of the greater tenants-in-chief of the Crown. These lands owed service to the king on similar conditions to those of a baron. So each bishop or abbot, because of his feudal possessions, owed the king the service of a certain number of fully equipped knights when called upon in time of need. In his capacity as a feudal tenant it was necessary for a new bishop or abbot to do formal homage

to his king at the time of his appointment; more often than not, bishops in full armour would lead their own knights into battle.

There was, however, at this time on the Continent a great spiritual movement which aimed at purging the Church of its worldly associations and making it a greater force for good in the world. Devoted churchmen felt that until the Church were freed from lay control this movement could not achieve any measure of success. William the Conqueror was to a great extent in sympathy with the reformers, who were a very powerful influence in the monasteries of Normandy. In his reorganization of Church matters in England, therefore, he brought over from Normandy one of the most notable reformers, Lanfranc, whom he appointed Archbishop of Canterbury. He also permitted the institution of separate clerical courts to deal with offences committed by the clergy, and with such matters as divorce, bastardy, and wills, which came within the domain of the canon law of the Church. But at the same time he maintained an effective control over the Church which was not in accord with the views of the advanced reformers, who asserted that bishops and abbots should neither accept their appointments from the king nor pay him homage as feudal vassals. This "Investiture Contest," as it has been called, raged for many years in the Holy Roman Empire and considerably weakened political authority in Europe. In England it did not become acute until the reign of the Conqueror's youngest son, Henry I (1100–35),

when it was amicably settled by a compromise. When a vacancy occurred in a bishopric the chapter of the cathedral, on receipt of the king's *congé d'élire* (permission to elect), were to proceed to the election and investiture of a new bishop, who in turn in his capacity as a feudal magnate was to pay homage to the king. In reality the king maintained his control over the greater clerical appointments, since with his *congé d'élire* was always included the name of his candidate for the vacant post. Very rarely did the chapter venture to oppose his wishes. Probably the fact that the greater officials of the Norman Court were all Church dignitaries prevented the clash of wills between chapter and Court.

§ 6. Norman Administration. The Norman kings were great administrators. Like all kings of their day, they firmly believed that the only method of ensuring good government was by making more effective in practice the supremacy of the royal authority. And undoubtedly they were right. William knew that only the semi-independence of the great feudal nobles and the consequent weakness of the central Government had made it possible for him to conquer the country. He had also, as a turbulent vassal of the French king, realized to what a great extent the power of feudal nobles circumscribed and limited that of their overlord. He and his immediate successors gradually evolved methods for checking the over-mighty nobles which rendered possible the growth of a strong central Government. We must now consider the growth of this central

Government and the various elements of which it was composed.

In the first place it was usual for all feudal kings to have courts to which they summoned their tenants-in-chief. In the Latin chronicles of the day such a court was termed the 'Curia Regis.' A Curia Regis, indeed, developed in Norman England. As it became the parent stock of nearly everything permanent in the British Constitution it is necessary for us to consider some of its leading features, since in most cases these are of primary importance for a right understanding of much of subsequent constitutional history.

The first feature of the Curia Regis which attracts our attention is that it was not composed of *all* the tenants-in-chief, nor was it composed of merely the greater barons. Its composition was entirely indefinite and followed no rule whatever. The king exercised his own discretion in the matter and summoned just those of his tenants-in-chief with whom he wished to consult. It must distinctly be remembered that attendance at the king's court was not regarded as a privilege, but as an irksome obligation which most barons preferred to shirk. To-day men seek for a seat in Parliament as a privilege and an honour. We must beware of reading modern ideas into the affairs of the Middle Ages.

In the same way the Curia Regis was not a body which imposed constitutional checks upon the power of the Crown like Parliament at a later date. Its

meetings were rather a source of greater strength to the king, who made a practice of gathering his barons round him at certain seasons of the year such as Easter, Whitsun, and Christmas in order that he might the better keep his eye on them. Their consent was usually asked for important acts of the central Government such as the separation of the jurisdictions of the spiritual and temporal courts mentioned above. But it was probably only formal. As there existed then no such thiog as taxation in its modern sense it cannot be said that their consent was necessary to taxation. Danegeld, we know, was usually collected by the Norman kings without the consent of this body. Only when a king wanted additional taxation above and beyond the ordinary revenues of the Crown did he consult his barons, who would on sueh occasions grant him a 'subsidy' or 'aid.' But this was 'extraordinary taxation'; it did not recur at regular intervals; it was asked for only for some special purpose. The ordinary royal revenue, consisting of the profits made from Crown lands, the payments made by tenants-in-chief, the ferm of the shires, and the fees and fines derived from judicial proceedings, was collected on the authority of the king alone and were subject to no control by the barons.

The chief business of the Curia Regis was judicial. It was, in the words of Maitland, "the highest court of judicature, for the great cases and the great men." The king was still regarded in those days as the chief judge of his people, and Norman monarchs often

decided cases personally. By feudal custom it was the duty of his tenants-in-chief to be present as assistants in their lord's court. But in practice it was usual to summon a large gathering of them only at festival times such as those mentioned above. Such an assembly was known as a Great Council (Magnum Concilium). The permanent staff of the Curia Regis consisted of a much smaller body of household officials and other administrators whom the king collected round his person. The chief of these was the Justiciar, who presided over meetings in the king's absence and acted in the capacity of a viceroy when the king was abroad. Then there was the Treasurer, who was responsible for the management of the royal hoard, and the Chancellor, who presided over the busy clerks scribbling behind the screen in the king's chapel. There might also be such great household officials as the Chamberlain and the Butler, and any other whom it might please the king to summon. This body heard and determined all cases in which the king was concerned. During the Norman period its sittings became regular. The scope of its judicial activities, too, began to broaden. In the reign of Henry I it heard a few cases of appeal from local courts in which a litigant had unsuccessfully attempted to get a verdict. But as yet no cases of appeal in the modern sense of the term came before it; such an idea as appeal from the sentence of a court was unknown to English customary law. The 'doom' of a customary court was the expressed Will of God.

But the Curia Regis in this more specialized form also transacted financial business. Twice a year, at Easter and at Michaelmas, the sheriffs came up to Westminster to pay into the Royal Treasury the revenues from their respective shires. On those occasions the members of the Curia Regis met to receive these payments in the Exchequer (Curia Regis ad Scaccarium), so called from the chequered cloth upon which the moneys were counted. The records of these transactions were written down on three separate parchment rolls, the most famous of which was called the Pipe Roll, on account of its shape, and was kept by the Treasurer. The Pipe Roll for the year 1132 is still extant, and is a precious mine of information to historians. The Normans understood more than any previous English rulers the importance of finance as a department of government. The compilation of Domesday Book was undertaken partly in order that William I might ascertain with exactitude the amount of taxation due to him from his new kingdom. "The great rate-book of the kingdom" it has aptly been called by one historian who saw in it the first attempt at introducing method into the royal finances. Probably, however, the survey which resulted in its compilation was due primarily to William's anxiety to gauge the resources of his new kingdom in the event of a possible Danish invasion. To Henry I is due the credit of rendering systematic the public finance of his realm. It was in his reign that the Rolls and the methodical working of the Exchequer came into

being. The Norman kings from the start realized the high importance of maintaining a decisive economic superiority over their barons. The Conqneror retained in his own hands twice as many manors as he gave to any haron, with the exception of his two half-hrothers. His estates hrought in something like douhle the revenue of Edward the Confessor's. The royal Treasnry and the heginnings of an expert Exchequer system were potent factors in the estahlishment of a really effective central Government, and their development by the Normans was a hig step forward in the history of English administration.

A new technique is also to he seen in three other developments of this period—the nse of the writ, the jury, and the itinerant justice. The writ was a royal mandate directing that some particular act should he performed. It had heen nsed under Edward the Confessor to direct some specially nominated magnate to try a case on the king's behalf in the shire court. Under the Normans this method was extended much further and the scope of royal jurisdiction enlarged. At the same time the method of demanding an answer on oath from groups of individuals likely to have special knowledge of the matter in question was introduced for the better information of the royal commissioners. 'Recognition,' or 'sworn inquest,' was the method used in the compilation of Domesday Book. As a device for proving facts it was much superior to the procedure of the Saxon courts, and

the demand for it by litigants caused the employment of royal justices in the local courts to become more common. Hence arose the practice of commissioning itinerant justices, who went into the locality where the parties in a case resided and sat in the hundred or the shire court. Technically this was a session of the Curia Regis, and this intrusion of the central court into the localities had immense consequences upon our constitutional development.

CHAPTER III

THE DEVELOPMENT OF CONSTITUTIONAL MACHINERY UNDER HENRY II

§ 7. The Importance of the Accession of Henry II. The great work of reorganization and consolidation accomplished by the Normans was brought to a sudden stop by the death of Henry I in 1135. During the next nineteen years England was plunged into the throes of an appalling series of civil wars due to the dispute as to the succession to the throne between Stephen and Matilda, the daughter of the late King. During these years feudal anarchy reigned supreme. The barons, whose power had been so carefully circumscribed by the Norman Government, were quick to seize the opportunity of asserting their independence of all control. Castles sprang up like mushrooms all over the country. From within their walls the local magnates both practised all the arts of tyranny upon their unhappy tenants and defied the central Government. The practice of private warfare grew to such proportions among the Norman baronage that some writers think they almost destroyed themselves as a class, their place being taken by a new nobility largely recruited from the English people. Certain it is that from this time onward the distinction between Norman and English becomes less and less clear, until in the

following century it passes away entirely. During all this period the central Government was powerless. Only in the Church was any semblance of order maintained.

Luckily for England Stephen was succeeded in 1154 by one of the ablest men who has sat upon her throne. *Henry* II, the son of Matilda and Geoffrey, Count of Anjou, was a man of constructive genius and forceful personality. With very little true English blood in his veins, married to the greatest heiress in South France, Eleanor of Aquitaine, he never evinced any patriotic feelings for the country upon whose history he left his mark. His policy was almost entirely selfish: it aimed at the consolidation of his power and the strengthening of the central Government. The terrible situation created by the reign of Stephen made such a policy of inestimable benefit to the great majority of Englishmen.

Henry's first task was to put an end to the turbulent independence of the feudal barons. He ruthlessly and systematically stamped out all opposition, demolished all castles that had been built without royal licence, and expelled the mercenary soldiers who had been employed in the recent wars. He restored the governmental organization of the Normans. Then he set himself laboriously to complete, as far as possible, the edifice whose foundations had been laid by Henry I.

§ 8. **Military Reorganization.** Although this department of Henry II's work is only of minor importance compared with his development of the

Curia Regis and of the administration of justice throughout the realm, it will be convenient here to consider it first, since upon its success depended so largely the success of his other reforms. In the days of the Norman kings the military forces at the disposal of the king were of three types. There was in the first place the feudal levy of the kingdom, consisting of the tenants-in-chief with their individually specified numbers of fully equipped knights. Then there was the old national militia of the English nation—the fyrd—based upon the military service rules of later Saxon times, whereby every so many hides furnished one fully armed soldier. It was the duty of each sheriff to collect and lead the fyrd of his shire. Finally it was the custom of the Norman kings, whenever necessary, to hire bands of foreign mercenaries.

The rules regarding service in the feudal host were very vague. Moreover, an army of feudal magnates leading their own knights tended to be a clumsy, ill-disciplined force. The knights obeyed their immediate lords rather than the king. Henry II therefore preferred to use the fyrd and mercenaries, and to take a scutage (shield money) from the barons and the ecclesiastical tenants in lieu of the traditional forty days' service. Knight service was valued at eightpence a day; hence the normal rate of scutage was two marks a knight. As the king usually demanded a longer term of service than forty days the scutage-payer stood to gain by this rate of commutation. The king's object, however,

was to weaken the great feudatories by disarming their vassals. Tenants-in-chief could not escape service by a voluntary scutage: they had personally to accompany the king to war or in default pay a fine many times greater than scutage. It was safer for the king to have his greater barons close under his eye; then they would be unable to take advantage of his preoccupation or absence from the country to foment rebellion.

But the fyrd over and over again in Norman and Angevin times proved itself to be an invaluable instrument for checking the turbulence of the baronage. The Norman kings had made frequent use of it. Henry II went a step farther when by the Assize of Arms of 1181 he completely reorganized it and greatly added to its strength. Every freeman in the realm was bound to equip himself with arms according to his means. Under fyrd-law this obligation had fallen upon free landholders only. The Assize extended it to artisans and traders with a yearly revenue of ten marks and upward. The regulations for the armour of each class were set out with exactitude. They were enforced by the method of sworn inquest—local juries of sworn men acquainted with the facts of each individual case.

A further measure which aimed at curbing the military power of the magnates was the royal decree making all knights' fees, whether created at the Conquest or subsequently, liable for the payment of aid and scutage and subject to the rule

of direct homage to the king. Barons were thus forbidden to create fees free from royal service or retain landless knights. It is interesting to note that in the fifteenth century, when feudal lawlessness defied the weak Lancastrian monarchy, these two practices became widespread.

§ 9. **The Expansion of the Curia Regis.** In the previous chapter we have seen that in Norman times the Curia Regis was, in the words of Bishop Stubbs, "the court of the king sitting to administer justice with the advice of his counsellors; those counsellors being, in the widest acceptation, the whole body of tenants-in-chief, but, in the more limited usage, the great officers of the household and specially appointed judges." During the anarchy of Stephen's reign this royal court ceased to function. Its justices were no longer sent to collect taxes and hold pleas in the shire courts. Henry II realized from the beginning of his reign that the restoration of the Curia Regis must be one of his first and foremost duties. But he not only restored the Curia Regis; recognizing its immense importance in the machine of government that he was gradually constructing, he developed and defined its powers and brought it into increasingly closer contact with the local courts throughout the country.

In the first instance the Curia Regis in its judicial aspect ceased to be "an occasional assembly of warlike barons." In the reign of Henry II it became a permanent board of expert judges and lawyers.

The Exchequer became a specialized department with its own staff. We see also the faint beginnings of separation between the judicial and administrative departments of the Curia. A committee of justices was set up to deal with judicial matters coming up for the royal ear. Their sessions were known as the Curia Regis in Banco. In time they became the Court of King's Bench. In 1180 one of the lawyers who played an important part in developing the new legal procedure for which the reign is famous, Ranulf Glanvill, became the presiding justiciar of this court.

Now this introduction of the professionalist spirit and of specialization into the Curia Regis led to much greater efficiency in every way. It meant also, as has been pointed out before, that men began to prefer the king's justice to that dispensed by the local courts or the barons. So as the reign progressed the doors of the Curia Regis were opened to all classes of the community except villeins. At the same time the circuits of the justices of the Curia Regis were once more established. Periodically in all the counties of England the itinerant justices (or 'justices in eyre') appear and summon before them all the freemen. By the Assize of Clarendon (1166) they were empowered to inquire into all cases of robbery or violence by the sworn testimony of those present. This was the beginning of the modern practice of making the accusation and punishment of all crime a matter for Crown action. "This is an immense step in the history of criminal

law," says Professor Maitland. "A crime is no longer regarded as a matter merely between the criminal and those who have directly suffered by his crime—it is a wrong against the nation, and the king as the nation's representative." It was also a severe blow at the independence of the barons. Ten years later the Assize of Northampton (1176) regularized this procednre. Twelve sworn men representing each hundred were to present to the justices in eyre all persons accused of crime.

The visit of the royal commissioners to a local court constituted a session of the Curia Regis in that locality. It was preceded by a writ directed to the sheriff instructing him to summon a meeting of the shire court. All freeholders were expected to be present: no immunities or privileges could be pleaded in excnse for absence. Each village must be represented by the reeve and four legal men,[1] each borough by twelve legal burgesses. Juries were to be empanelled to answer the long list of inquiries which the itinerant justices were usually required to make. These juries—composed mainly of knights chosen from each hundred—had administrative as well as judicial business to perform. They had not only to report the pleas of the Crown awaiting trial and the private pleas for which permission to use the court had been granted by writ, but also to give information

[1] 'Legal' men were those who were law-worthy and oath-worthy—*i.e.*, men acceptable to a court and able to participate in a valid oath. The opposite term is outlaw.

upon all manner of feudal matters such as escheat, wardships and marriages, unpaid aids,[1] and even Church vacancies. Unpunished crimes must also be reported, and the accused persons produced in court.

Henry II greatly developed the use of these juries of sworn inquest. The Assizes of Clarendon and Northampton laid down the procedure to be followed in 'presenting' criminals to the royal justices. They had to swear an oath to the facts of the case: this was their *veredictum*. After this the accused was put to the ordeal. If he failed he would be executed; if he were successful he was banished from the realm. The belief in the efficacy of ordeal as a means of discovering the Will of God was becoming shaky. The human *veredictum* was the determining factor. The *jurati*, however, were in no sense a modern jury. They were 'recognitors'—more of the nature of witnesses, that is to say. We have a long way to go before the *jurati* become judges of fact as they are to-day. The jury of presentment developed later into the 'grand jury' (abolished almost completely in 1933) in the more heinous criminal cases, which found a 'true bill' against the accused—*i.e.*, decided that the evidence against him was sufficient for the case to be proceeded with.

In civil cases the jury of recognitors was not part

[1] 'Aids' were the usual feudal subsidy paid by vassal to overlord. The three most common ones were for ransoming the lord from captivity, when the lord's eldest son was knighted, and when his eldest daughter was married. Here the reference is to aids due to the king as overlord of tenants-in-chief.

of the regular procedure of the courts. The method introduced by the Normans for settling cases of disputed title to land was the absurd one of trial by battle. "The devil himself knoweth not the heart of man," ran the old proverb. God alone could judge; hence trial by battle, like ordeal, aimed at discovering the Divine Will. But belief in the efficacy of this method also was on the wane, and already in Norman times by means of legislative acts known as 'assizes' the Curia Regis was specifying types of actions in which a landowner could avail himself of procedure by jury of recognition, if he applied for the necessary writ.

In Henry II's reign this form of procedure was developed very rapidly. Actions regarding tenure were defined, and writs with uniform wording appropriate to each type were drawn up. Hence we have the famous three possessory assizes—*novel disseizin*, or the claim that the defendant had wrongfully dispossessed the plaintiff; *mort d'ancestre*, or whether the plaintiff's ancestor had died in possession; and *darrein presentment*, for determining who made the last presentment in a case regarding ecclesiastical patronage. To these were added the 'grand assize,' a type of case in which a tenant's right to property was challenged, and *utrum*, an inquiry into the nature of the tenure in order to decide whether the case came before a lay or ecclesiastical court. It was laid down that no action could take place in the king's court except through application for the appropriate writ. Hence

the free tenant could choose whether to apply for the royal writ or have his case tried by the old-fashioned procedure in the Court Baron (*i.e.*, court of his superior lord). As the choice was made by the defendant the tendency was for the king's courts to grow at the expense of the private courts, or, as it has been facetiously put, "Henry II's centralized stores competed with the local shops, and he provided a cheaper and better article than the local courts baron."

Two other writs hastened this process still more. *Præcipe* ordered the sheriff to require a defendant to return the land in question or appear in the king's court to defend his title to it. The Writ of Right ordered the lord of a private court to do justice to a plaintiff under pain of the withdrawal of the case from his jurisdiction to that of a royal commissioner. Both were based upon the principle that it is the king's duty to secure justice for all his subjects. The former in particular was responsible for the transference of a mass of litigation from private courts into the king's court, and was very unpopular with the owners of courts baron, who regarded such transference as nothing short of confiscation. The fees and fines of justice were very valuable whether to king or barons. *Justicia magnum emolumentum est*, wrote a chronicler of the time. And there can be no doubt that the king was strongly inspired by the double motive of increasing his revenue and depressing the baronage when he became so solicitous regarding justice.

The immediate result of thus bringing the Curia Regis into close contact with the localities was the creation of a new department, the Court of Common Pleas, which normally sat at Westminster. Difficult cases would he reserved for this court—cases where local custom was in conflict, or where its application was impossihle. The Court of Common Pleas acted as a sort of common denominator to the system, and hy its decisions and classification of actions it established precedents and methods which were applied generally throughout the realm by tbe justices in eyre. It absorbed the best local customs also and applied them generally. In this way much local custom passed out of use, and what we now call English common law gradually evolved. Local customs were not common; their variety was amazing, and they tended to become the handmaids of anarchy. When he fostered the growth of English common law, therefore, Henry II was indirectly promoting the cause of national unity.

§ 10. **The Struggle with Becket.** In the Middle Ages in Europe a great and almost continuous struggle went on between the lay and ecclesiastical authorities. Both powers claimed unlimited jurisdiction within their relative spheres, but they could not agree as to the bounds of that jurisdiction. Consequently one was always claiming rights which infringed upon those claimed by the other. In England in the reign of Henry I the two powers quarrelled over the question of the authority of the king over bishops. This concerned only the feudal

aspect of the Church and was easily settled by a compromise. In the reign of Henry II, however, a quarrel arose over a much more fundamental question—one which concerned the relations between the whole body of the clergy and the whole body of the laity—the question of the jurisdiction of the king's courts over the spiritual courts.

Under William I the Church had been allowed to establish separate courts for dealing with offences committed by the clergy in their capacity as members of the body ecclesiastical, and with such other questions as adultery and heresy which were then generally agreed to be purely Church matters. When Henry II was engaged upon the task of constructing the machinery for the administration of justice which we have just studied, he found that the jurisdiction of the Church courts had been extended to include criminal offences committed by clerks. It was estimated that during the time of Stephen as many as a hundred murders had been committed by clerks, who, because of this development of the jurisdiction of the Church courts, had escaped punishment in the lay courts. Now, the spiritual courts could only inflict lighter penalties such as imprisonment and excommunication; they could not condemn a criminous clerk to either mutilation or death. Henry was of opinion that clerical criminals should receive the same punishment as ordinary laymen who committed crimes. Archbishop Becket, however, maintained that a clerk was under no circumstances responsible or subject to the temporal courts.

The matter came to a head in 1164, when Henry summoned a Great Council at Clarendon, with the assent of which he promulgated certain 'Constitutions' or rules regulating the relationship between the Church and the Crown. One of these provided that all persons accused of crimes were to be dealt with in the first instance in the King's courts. There it was to be determined whether the case was one for trial in a lay or spiritual court—*i.e.*, whether the accused man were a layman or a clerk. Clerks were to be tried in spiritual courts, but if condemned they were to be degraded from holy orders and punished by the secular arm. The other provisions of the Constitutions of Clarendon need not concern us here; they represented a serious attempt on the part of the King to bring the Church into complete subjection to the royal power. But in this matter Henry was unsuccessful—the organization of the Church was too strong for him, and the murder of Becket forced him to withdraw from his position. So throughout the Middle Ages the spiritual courts maintained their jurisdiction over criminous clerks, and there grew up that grave abuse to the administration of justice called 'benefit of clergy.' Many men who were not priests could claim the right to be tried by the spiritual courts on the ground that they belonged to one of the minor orders of the Church. It was in most cases quite impossible to distinguish between the true and the spurious clerk. A test was accordingly invented. The claimant to 'benefit of clergy' had to establish his holiness by

reading one of the psalms in Latin. That soon degenerated into the recital of one verse, the 'neck-verse,' from the prescribed psalm. Medieval justice, therefore, was limited by the fact that practically every educated criminal could save his neck from the gallows by the expedient of claiming 'benefit of clergy.'

CHAPTER IV

MAGNA CARTA AND THE BARONIAL REACTION

§ 11. **The Successors of Henry II.** Henry II had built up a despotism of great efficiency and, for the Middle Ages, of quite exceptional power. The government of England was becoming a machine; as such it was not quite so dependent for its efficient working upon the personality of the king. It showed in the reign of his son Richard I (1189–99) that even if the king were absent from his realm for years on end it could continue working with tolerable success. But all despotisms suffer from one great defect: the efficient despot who rules in the interests of the community at large cannot ensure the future succession of men like himself. So it was with Henry II. His two sons who succeeded him in turn were men of great ability. Richard, however, the elder, was a poet and a knight-errant, whose life was spent in search of romantic adventures, but who cared not one jot or tittle for the good governance of England so long as the necessary financial resources were forthcoming to render possible his warlike ventures. John, on the other hand, was a faithless, self-seeking tyrant who frankly used his father's governmental machinery to his own personal ends. Their reigns taught Englishmen that, "if the first condition of progress was the restraint of the

barons, the second was the curbing of the Crown" (Pollard).

It must not be imagined, however, that the reign of Richard I was devoid of constitutional developments. The very fact that government continued to function with regularity for ten years, during which the King was only in the country for some nine months, is in itself of great constitutional significance. Half a century earlier such a thing would have been impossible. But Henry II's governmental system was in the hands of his sons devoted chiefly to money-making. For instance, the method of holding inquiries by means of juries (the jury of inquest) was further developed by Richard in order to find out exactly what were the feudal rights of the Crown over land in every shire. The financial necessities of the Crown also fostered the growth of local government. Not that either Richard or John was anxious to do so. But both needed money and were willing to sell anything that would fetch its price. So a large number of towns bought from the king freedom from royal jurisdiction in the form of Charters of Liberties. The towns that secured these became corporate bodies with definite privileges and certain rights of self-government and self-taxation. The most important of these charters was that secured by the Londoners during Richard's absence. By it they were given the right to elect the sheriffs of Middlesex and absolute immunity from interference by royal officials in the affairs of their commune. This charter caused no little stir

in men's minds at the time. One of the monkish chroniclers wrote of it with great indignation, *Communis est tumor plebis, timor regni, tepor sacerdotii.* A famous rendering into English slang of this sentence runs, "A commune gives the mob a swelled head, puts the monarchy in a funk and the clergy in a stew." But the commune had come to stay. Other towns not only followed London's example, but imitated its charter, and this new type of community, the borough, came into existence. England, as Professor Ramsay Muir has pointed out, was becoming a "land of communities"—manor communities, borough communities, shire communities—and the central Government found it easier to deal with communities than with individuals. The importance of this fact in the history of English institutions can hardly be overestimated, since from it grew up the idea of representation, which before the end of the thirteenth century gave birth to Parliament. It happened in this way: at first the Government dealt individually with communities by sending round commissioners to each; then it conceived the idea of summoning representatives of the greater communities (shires and boroughs) to meet together at Westminster and voice the feeling of the country on matters of moment. This, as we shall see, was the germ of the House of Commons. In the days of Richard and John on two separate occasions the shires were ordered to send representatives ('knights of the shire') to confer with the Government on matters of finance. We do not know whether these

assemblies ever met, but the fact of their summons is very significant.

It was only natural that the far-reaching reforms of Henry II should evoke considerable opposition among the baronage. This, indeed, came to a head long before the close of his reign in the great feudal revolt of 1173–74. On this occasion the barons failed, and as time went on they seem to have accepted the new principles of government which he had introduced. And he was wise enough to control the machine he had created. Not so his sons. Henry had unblushingly sold the good justice which he had created. John, however, carried profiteering in this article too far. In criminal cases also Henry was often impatient of the due course of law and resorted to arbitrary imprisonment. It is interesting to note that Richard on his accession deemed it wise to release all who were suffering in this way. The baronial opposition, therefore, began to accept common law, with its implication of common right, as a defence against arbitrary action on the part of the new bureaucracy.

Thus under Richard and John the barons adopted a constitutional basis for their struggle with the Crown. They reverted to the traditional idea of the magnates as the hereditary counsellors of the Crown. Their plea was that in the most important matters, and especially those in which they themselves as a class were concerned, the king should seek baronial counsel, that government should be

cum consilio magnatum. This aim is expressed, though in a variety of ways, in all the baronial movements of the century following Henry II's death. In the legal sphere, for instance, when the king enacted an assize affecting ancient custom their demand was that he should do so *per consilium baronum nostrorum.* As the assize was the nearest approach to legislation reached in those days the barons' position is significant.

In John's reign, however, it was in the fiscal sphere that the need to control the Crown was most felt. The mass of special custom connected with knight service and baronage contained so much ambiguity that John found here an unrivalled opportunity for oppression. He alienated both baronage and Church by continued abuse of his feudal rights. In particular his interpretation of his right to exact feudal aids and scutage was one of the main causes of the movement which produced Magna Carta. The arbitrary way in which he would proclaim a campaign, ordering certain barons to accompany him and the rest to pay scutage, outraged them beyond measure. They were willing to concede that customary aids and scutages might be taken by the king as a matter of course; but when an exceptional one was demanded their position was that the king could not take it without the consent of a specially summoned meeting of his Curia in its wider aspect—the baronage.

§ 12. The Great Charter of Liberties, 1215. The baronial opposition against John came to a

head when the great coalition which he had built up against Philip Augustus of France suddenly collapsed with the decisive defeat at Bouvines (1214). The baronial party, finding that they had the King at their mercy, asserted their feudal right of *diffidatio* (renunciation of allegiance), and announced the terms upon which they were willing to pay him homage once more. On June 15, 1215, at Runnymede the King accepted their terms, which were embodied in a document of over sixty clauses known to history as Magna Carta Libertatum.

As far as England may be said to have possessed a national sentiment in the early thirteenth century that sentiment was behind the barons and Stephen Langton when they laid their demands before John. Most people, whether nobles, commoners, or serfs, had felt the evil effects of his rule and were anxious that such a state of affairs should be speedily ended. But there was nothing in the Charter to which could be given the name 'constructive reform.' By far the greater number of its provisions refer to the various ways in which John had personally abused his feudal rights over his tenants-in-chief. The King promises to refrain in future from committing these abuses; the barons in their turn promise to observe toward their own vassals the same respect for their privileges as the King has promised to observe toward his tenants-in-chief. But no guarantee is provided in the Charter that these promises will be carried into effect, save that a committee of barons is to be set up to see that the

King carries out his part of the bargain. Most of the clauses touch only tenants-in-chief of the Crown.

But there are certain important clauses in which the rights of freemen are mentioned. "No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or anywise destroyed, nor will we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land" (translation by Stubbs). In the thirteenth century the great mass of the population of England were not freemen. It is estimated that the unfree (*i.e.*, serf) element then constituted at least three-quarters of the total population. Now, serfs were not included in this clause: they were chattels. They had no legal standing in the king's courts. They possessed no 'liberties.' One clause, indeed, does protect the villein from being fined by the king to such an extent as would cause him to lose his means of livelihood. But as his lord would be indirectly the sufferer from such a proceeding it is easy to see what was the motive behind the clause. The real danger to the liberty and happiness of the villein was not the king, but his own immediate lord. No clause in the Charter limits in any way the rights of lords over *their villeins*.

Then in the next place what were these 'liberties'? They were certainly not 'political liberty' as we understand it to-day. The word 'liberty' in thirteenth-century usage meant some concrete privilege belonging to some person or set of persons. To a feudal baron it meant the right to force all his

tenants to submit to the jurisdiction of his court. It might mean exemption from certain services or payments which others were obliged to give. Read in this light, the Great Charter is a charter of special privileges claimed by various classes of the community. John had abused them. But the motive of the claim was due to something more fundamental than the misrule of John. The governmental system constructed by Henry II had either threatened or actually taken away 'liberties' which he had considered dangerous to the royal power and the good governance of the realm. The freemen wanted to be tried by their 'peers' (equals) and by the law of the land (*i.e.*, the ancient customs), because they disliked the innovations introduced by Henry II into legal proeedure. Especially did the barons resent being tried by the itinerant justices—those upstart lawyers from the Curia Regis. They received mueh gentler treatment at the hands of their 'equals.' In the same way they were anxious to protect their courts from royal intrusion; so we find the famous elause whereby it is laid down that the writ *Præcipe* is not to be issued in such a way as to eause a freeman to lose his court. This writ was, as we have seen, a royal order whereby cases were taken from private courts to be settled in the king's courts. It was an important part of the judicial system of Henry II, and one of the ways in which the speedier and more efficient administration of justice was accomplished by the justices of the Curia Regis. A method of evading this clause was, however, soon

discovered, and it failed to impose any real check upon the flow of litigation from private courts to the king's.

In the sphere of finance the Charter provided that if the Crown wished to levy anything more than its ordinary feudal revenue the consent of its tenants-in-chief must be obtained. For this purpose a Great Council of them was to be summoned by royal writ. This council was not, as Stubbs suggested, representative of the nation. It was composed only of tenants-in-chief of the king: they met as a class to approve of the taxation of their class. Beyond that they neither had nor claimed any control over the king's powers of taxing other classes. There was in those days no such thing as national taxation. The nearest approach to it was the tallage that was exacted by lords from their tenants. This was a more general form of tyranny than any of the things complained of in the Charter; but it was left unchecked. Those politicians who at various times in later English history asserted that "no taxation without representation" is a principle of Magna Carta must have given the document either a very superficial study or none at all. But that is not all. The 1215 edition of the Charter never became law. The third reissue of the Charter under Henry III in 1225 was the one enforced in the law-courts and by Parliament; in it the clauses limiting the power of the Crown over extraordinary feudal taxation were annulled.

Some of the clauses of the Charter contained some

very sound declarations of principle. The first clause of all declares *Quod Ecclesia Anglicana libera sit* ("That the English Church be free"), and proceeds to explain that freedom from all royal interference is meant. But notwithstanding this clause the Crown still continued to exercise a more or less effective control over all appointments to the higher offices of the Church. Then there is the excellent statement: "To none will we sell, to none will we deny or delay, right or justice." Like so much of medieval law, it was the statement of an ideal, but an ideal unattainable in practice unless the necessary machinery for carrying it into effect were constructed. Of this Magna Carta contains no mention. The clauses, too, guaranteeing the privileges of merchants, enforcing uniformity of weights and measures, and remedying the forest abuses were all good, as also was the one fixing the habitat of the Court of Common Pleas at Westminster. But the crowning defect of the Charter when judged from a modern standpoint is that its last clause, permitting the barons to make war upon the King if he failed to carry out its provisions, simply legalized rebellion. The clause is merely an assertion of feudal privilege, like practically everything that preceded it in the document. The Charter, indeed, is far less a constitutional document than a picture of early thirteenth-century feudalism, a treaty of peace between King and barons, which the former intended to repudiate—and did—at the earliest possible opportunity. And the events of Henry III's

reign were to demonstrate that the barons had neither the desire for nor any conception of constitutional government. The main importance of the Charter lay in the fact that it did clearly assert that the laws of the land were not to be set aside by the arbitrary decrees of a tyrant. And, as luck would have it, when that tyrant, having set his seal to the Charter, straightway repudiated it he died suddenly, and a long minority ensued. The Charter, therefore, was saved, and although in subsequent reissues clauses 12 and 14, dealing with the need for consent of the Commune Consilium to aids and scutages, were omitted, the principle was faithfully observed in practice.

§ 13. **The Misrule of Henry III and its Constitutional Results.** John repudiated the Charter immediately after the Runnymede meeting. Managing to organize a very powerful royalist party, and supported by the Pope, who absolved him from his promises to the barons, he was soon in so strong a position that the opposition was forced to look to France for aid.

At the critical moment, however, when complete success seemed to be easily within John's grasp, the disaster in the Wash and his subsequent death saved England. Henry III, who succeeded his father, was a young boy. The regency fell successively into the wise hands of William Marshall, Earl of Pembroke, and Hubert de Burgh, Earl of Kent, who accepted the Charter, drove out the French, and restored order in the country.

But the expulsion of the French did not put an end to foreign influence in England. John had in a vague sort of way accepted the feudal overlordship of the Pope and paid homage to his representative, Pandulf. In his son's reign another Papal legate, Gualo, played an important part in the Government and treated England as a Papal province. As the young King grew to manhood he became more and more subservient to the Pope. Foreign clergy of a low moral type were given the highest offices in the Church, while the Pope drew enormous sums of money from England to finance his extravagant political schemes in Germany and Italy. England was indeed "the milch cow of the Papacy." To make matters worse Henry allowed a swarm of needy foreign nobles, the relatives of his wife and mother, to descend like a plague upon his kingdom and greedily devour honours, titles, estates, and offices.

The barons in the reign of John had seriously compromised their cause by calling in French aid. The Papal legates, as the supporters of the Crown against an unpatriotic baronage, were thus able to exercise a very powerful influence over affairs of State in the reign of the young Henry. Soon, however, the baronial opposition began to regain its prestige as the opponent of unpopular Papal influence in England. As the other aliens appeared, so the baronage began more and more to take up the attitude of a national party seeking to oust the Italian clerics and foreign favourites. Hubert de Burgh was the first baronial leader to raise the cry

of "England for the English." From his time onward the greater part of Henry III's reign was occupied with this tedious and somewhat fruitless struggle. Only the gigantic figure of Simon de Montfort relieves the monotony of the chronic quarrelling and sheds the lustre of romance upon the scene.

But the barons were not out to establish constitutional government. The Provisions of Oxford (1258) and of Westminster (1259) simply aimed at controlling the king by means of a standing committee of barons. "Merely a legalized form of baronial anarchy" this has been called. The arrangements made by these Provisions could not possibly solve the constitutional problem, since the majority of the older barons were really intent upon securing their own independence as against the Crown. But as the mass of Englishmen had learnt to prefer royal autocracy to baronial oligarchy the barons could not hope for more than a temporary success. Simon de Montfort realized this. That is why in 1265 he summoned the representatives of towns and shires to his famous 'Parliament.' He wished to gain support from a wider class than that of the self-seeking baronial magnates.

Simon failed. He was unable to win the support he sought. The majority of the barons turned against him and caused his defeat and death at Evesham (1265). But his work remained as a great object-lesson, which his apt pupil Edward I was not slow to copy.

CHAPTER V

THE WORK OF EDWARD I AND THE ORIGIN OF PARLIAMENT

§ 14. **Edward I and the Problems of Feudalism and the Church.** Edward I, who came to the throne in 1272, was a man of entirely different calibre from his father. An ambitious imperialist, he aimed at extending his authority over not only the whole island of Great Britain, but also over the ancient lands of his house in France. An autocrat by nature, he was impatient of any control or limitation of his powers by either baronage or Church. His domestic policy, therefore, had in view two objects: to eliminate feudalism from the sphere of government and to restrain the Church from any further encroachments upon the State. He sought to accomplish these by legislation whereby the powers of barons and Church were carefully defined and restrained within known limits. He lived in an era of great legal activity in Europe. His chief ministers, men like Burnell the Chancellor, were lawyers. With his reign we stand upon the threshold of the age when written law supersedes custom and tradition, and when the sovereign becomes in a real sense the lawgiver.

Edward's first step was to institute the famous inquiry into feudal franchises known as *Quo War-*

ranto. Commissions were sent round the country to make a list of the rights of private jurisdiction owned by the barons. Then the royal justices in eyre were instructed to inquire in each case by what title (*quo warranto?*) these privileges were held. These proceedings, however, were exceedingly unpopular with the greater barons. The Earl of Surrey's famous reply to the justices indicates the attitude of the older nobility toward any development of interference by Government with what they considered to be their fundamental rights. The inquiry is of great value to the historian: its results were written up in the Hundred Rolls, which are one of our greatest sources of knowledge for this period. But the temper of the baronage was such that Edward was never able to utilize the information thus gained to dispute any of the 'liberties' of the greater barons. Until the Crown was strong enough to do this little real constitutional progress could be made.

His further measures for reducing the power of the magnates were of minor importance: they did not strike at the root of the matter. By the distraint of knighthood all freeholders whose land was estimated to produce an income of at least £20 a year—a considerable sum in those days—were required to become knights or pay a heavy fine if they refused. This increased the number of people owing knight service in the feudal array of the kingdom, but was probably no real check upon the power of the lords. One statute, *Quia Emptores* (1290),

which aimed at simplifying feudal relationships, did achieve a measure of success. It provided that when land was sold the buyer, instead of becoming the vassal of the seller as was previously the custom, became the feudal dependant of the seller's overlord. Incidentally this increased the number of the royal tenants-in-chief. Edward also revived Henry II's Assize of Arms by the Statute of Winchester (1285).

In his relations with the Church in the same way as with the baronage Edward I can hardly be said to have developed any greater royal control except in the matter of clerical taxation. What he did do was to put an end to tendencies which might have had serious consequences. He limited the jurisdiction of Church courts to matters of wills, marriages, titles, and such purely 'spiritual' matters as perjury, sacrilege, and offences against clergy. They were thus prevented from making further encroachments upon the sphere of the lay courts. But he did not attempt to deal with the more fundamental evils arising out of the question of 'benefit of clergy.' On the other hand, he wisely prohibited the granting of land to all corporations without express royal permission (Statute of Mortmain, 1279). From such land for very obvious reasons the Crown lost its feudal rights such as wardship, marriage, escheat, etc., and as the Church as a corporation possessed something like one-sixth of the land of the realm the matter was of no small importance. Indeed, men who wished to escape from feudal burdens often granted their land to a cathedral or monastery

in a purely nominal way, sn that they themselves still retained almost full rights of possession over it. In the matter of clerical taxation a struggle occurred between Crown and Church owing to the policy of Pope Boniface VIII in forbidding clergy to pay taxes to the secular authority. Edward's firm insistence upon the Crown's rights in this matter carried tbe day. The English clergy fonnd that in practice it was a *more terrible thing* to disobey the king than the Pope, and so the first step was talen in the direction which was ultimately to lead to separation from Rome and the establisbment of a national Church.

There was very little originality in the work of Edward I. He built upon the foundations already laid by Henry II, but his aims were lower and less comprehensive than those of his great predecessor. Edward was an eminently practical man, not a far-seeing statesman. He always sought to accommodate his ends to his means. But his imperialistic ventures imposed a very severe strain upon the country and considerably weakened the royal power as an effective governing machine. Had Edward pursued a policy of peace the history of his successor's reign would certainly have been very different, while the constitutional progress of England in the fourteenth and fifteenth centuries might bave been greater and more continuous.

In 1297, when the King's foreign policy had brought on wars with botb France and Scotland and entailed a financial strain on the country that was hard to bear, the discontented nobles, who bad

refused to take part in a French expedition, took advantage of Edward's absence in France to demand from his son a confirmation of the charters and certain additional clauses providing against the various forms of arbitrary taxation which the embarrassed King had been forcibly levying. Young Edward gave in to their demands; his father ratified his son's action. One famous clause thus sanctioned stated that henceforth no taxation other than that of the ordinary revenues of the Crown was to be levied except with the common consent of the realm. Most constitutional critics have interpreted this to mean that for all extraordinary taxation the consent of Parliament must be sought. But the importance of this must not be exaggerated. The baronial opposition of 1297, like that of 1258, had no constructive constitutional policy. Its aims were almost entirely selfish and obstructionist. The reduction of the powers of the Crown was its sole object. This was all to the good where those powers were used tyrannically, but the real tyranny in England was that exercised by the barons themselves within their own 'liberties.' The more successfully the powers of the Crown were checked by the baronial oligarchy the more unchecked were the 'liberties' of the barons. This was consistent neither with true liberty nor with constitutional progress.

§ 15. **The Origin of Parliament.** In the thirteenth century we find a particularly interesting and significant new feature developing in the English Constitution. To certain important conferences

summoned at the instance of the king and conducted in his presence the name 'parliament' is applied. The earliest known use of the word in English history occurs toward the end of the reign of Henry II. In the middle of the thirteenth century it begins to be used with great frequency. Whenever the king and his council meet for a very important discussion on some special matter of State their meeting is termed a 'parliament.' The old chroniclers Matthew Paris and Thomas Wykes applied the word in a rather vague manner to meetings of the king with his prelates and barons—meetings to which on some occasions elected representatives of shires and boroughs were summoned. But besides the chroniclers we have another and somewhat disconcerting source of evidence concerning this embryo institution. Starting in 1278 we have a series of official reports known as the Rolls of Parliament. These contain accounts, not of haphazard meetings of royal tenants-in-chief or elected representatives, but of regular sessions of the King's Council dealing with such judicial business as would arise from the consideration of 'pleas' and petitions to the Crown. So there were evidently two quite different types of bodies to which the name was first applied. We know too that before the reign of Edward I they were summoned at quite different times.

The most important example of the representative type of Parliament was that which Edward I summoned in the year 1295. This is known to us as the Great and Model Parliament, since it became

the model according to which in time the structure of future Parliaments was framed. To this Parliament the two archbishops, bishops, greater abbots, and the greater barons were summoned by special writs under the Great Seal issued to each individually from the Court of Chancery. General writs were issued to the sheriffs instructing them to convene meetings of the shire courts, at which two 'knights of the shire' for each county were to be elected to represent the county at the Parliament about to be held at Westminster. The sheriffs were likewise instructed to cause any corporate towns within their respective shires to elect two burgesses each for the same purpose. The archbishops and bishops were further required to bring with them the heads of their chapters, archdeacons, one representative of the clergy of each cathedral, and two of the clergy of each diocese.

The work of this Parliament was purely financial: the King wanted a special grant of taxation to carry on his wars with Scotland and France. It performed exactly the same function as the contemporary States General in France. But such a Parliament was rarely summoned, certainly not every year. On the other hand, the other kind of Parliament, the King's Council sitting for special judicial business, was in the reign of Edward I beginning to hold regular sessions every year—often as many as three a year. Its business was to deal with the increasing number of petitions which annually flowed into the Curia Regis. Henry II had opened the royal courts

to all the freemen of the realm. The royal courts dispensed speedier and better justice than the local courts, where customary law and procedure still prevailed. So as time went on the number of litigants and petitioners in the Curia Regis increased to the most remarkable extent. Professor Maitland tells us that in the reign of Henry III the number of forms of writ to the Curia Regis increased from sixty to over four hundred and fifty; while there still survive at the present day some sixteen thousand petitions to the Curia Regis dating from the reign of Edward I. Society had been growing too complex for the old-fashioned laws that were based on custom. Cases were always cropping up in the local courts in which the judges could not give definite decisions. So they were referred to the King's Court. Special sessions of the King's Council had to be summoned to deal with the novel problems raised in these petitions; it is these that are described in the Rolls of Parliament. The term 'parliament' was not even applied in the Rolls to the representative body summoned in 1295 which we have just described.

In 1298, however, a very significant change occurs. In this year for the first time on record the judicial and the representative bodies are summoned to meet together. From this time the practice grows up of summoning the bishops, barons, knights of the shire, burgesses, and clerical proctors to Parliament while the judicial Parliament is actually in session. They meet together, but at first the presence of the

magnates and representative elements is not essential to Parliament. Not until the reign of Edward III is the term 'parliament' restricted to assemblies modelled on the Great and Model Parliament of 1295.

It will be evident from the foregoing sketch of the origin of Parliament that its institution was due fundamentally to two causes—the one financial and the other judicial. In the first place the Crown wanted Parliaments largely because it was in need of special grants of money above and in addition to the ordinary feudal revenue, which in the thirteenth century was becoming inadequate for the growing expenditure of the more complex governmental machine. At first the custom was for commissioners to be sent from the Curia Regis to treat individually with the various shires and boroughs. Edward I conceived the idea of summoning representatives from the localities to a common assembly wherein they would make him a common grant. This greatly simplified the financial work of the Curia Regis. On the other hand, the people wanted Parliaments in order that they might petition the Crown. "They [the petitions] come from all sorts and conditions of men and corporate bodies, and from every quarter of the King's dominions," writes Professor Pollard. "A king of Norway as well as a king of Scotland is found petitioning Edward I in his Parliament. Edward I's own daughter Mary is represented, and the King himself prosecutes his suits there by his attorneys. Earls, bishops, and barons; abbots,

abbesses, and abbeys; shires, cities, and boroughs; judges, royal officials, and foreigners; merchants and Jews; the scholars of Oxford and Cambridge; poor men of this and that shire or borough; and even a body of prisoners, all expect justice or favour in Parliament. The petitions, indeed, are mostly from individual persons or corporate bodies; they are not the common petitions of the people of England."

CHAPTER VI

THE CONSTITUTIONAL DEVELOPMENTS OF THE LATER MIDDLE AGES

§ 16. **The Development of Parliament in the Fourteenth and Fifteenth Centuries.** In the fourteenth century the progress of English national life was very striking. The wars of the period began to lose the feudal aspect which had marked those of the preceding age, and to take on national characteristics. England even developed a national weapon—the longbow. In the Church the national movement was fostered by the antagonism to the Pope which grew up as a result of the "Babylonish Captivity" at Avignon, and by a national heresy—Lollardy—which appealed strongly to the lower classes. Then, too, we witness in this century the emergence of the English language as the medium for literature and thought: the work of Chaucer, Langland, and Wycliffe heralded the dawn of English literature. It is not surprising, therefore, that we find these movements strongly influencing contemporary constitutional development. The growth of the functions and powers of Parliament, and especially of the Commons, was the counterpart of development in the other spheres of national life. The improvement in the conditions of the lower classes brought about by the decay of villeinage, the growth of

foreign trade, and the spread of the craft gilds was an important factor in the progress of the new institution.

In studying the early history of Parliament we must be careful to form a clear conception of what a medieval Parliament really was. In the first place it did not consist of two Houses. One chamber only, known as the Parliament chamber, was the scene of all the deliberations of Parliament. In it sat the Council and the judges, the specially summoned greater barons and higher clergy. The representatives of shires, boroughs, and lower clergy took no part in the debates of Parliament. When they appeared in the Parliament chamber they were not even accommodated with seats: they stood mute behind a bar at one end of the room. They would be called into the Parliament chamber to witness the formal opening of Parliament by the king. The royal speech usually contained certain demands for money; after listening to it the 'Commons,' as the representative elements were soon called, would leave the chamber and go off to some convenient meeting-place to consider what answer they should make to the financial demands of the Crown. The lower clergy usually proceeded to Convocation, the representative assembly of the Church, which met simultaneously with the session of Parliament. There they made their grants of money; before long they ceased to attend Parliament, so that the original representation of the clergy in the Commons never became an integral part of our Parliamentary system.

The representatives of counties and boroughs, on the other hand, gradually acquired the habit of meeting together in some convenient room in Westminster Abbey—at first the Refectory, later the Chapter House. There they formulated their reply to the king, elected the 'Speaker' who should convey it to the royal ear on their next appearance in the Parliament chamber, and discussed their various grievances and petitions. This practice grew up in the reign of Edward II and became definite in that of his son. The phrase *domus communis* ('House of Commons') soon became applied to the meeting of the Commons, but it must be clearly understood that the 'House of Commons' in the Middle Ages was not a part of Parliament. The Commons were only in Parliament when they went, led by their Speaker, and stood behind the bar in the Parliament chamber. So we cannot with any semblance of truth say that the medieval Parliament was composed of a House of Commons and a House of Lords. The first reference that we have to a House of Lords does not occur until the reign of Henry VIII. Nor did the Commons always meet together in the fourteenth century. We have many instances of them splitting up into various sections, each of which deliberated separately and returned a separate answer to the king's speech. But the tendency was for the Commons to become increasingly conscious of their common identity and interests and to form a single body returning a single answer to the Crown's demands. In the same way the common

discussion of grievances and petitions soon led to the blending of individual petitions into common petitions. When the House of Commons sent up a common petition to the king it became a matter of politics to which the Crown must answer by a categorical "Yes" or "No." The natural result of this was that the Commons began to bargain with the Crown. In return for a grant of money the king must give his assent to their common petitions. The almost continuous financial straits of Edward III gave many opportunities to the Commons for securing royal assent to their petitions. This, therefore, becomes a form of legislation: the Commons petition; the Crown with the advice and consent of the lords spiritual and temporal enacts; the result is a 'law,' since it is made by the highest law-court of the realm. But at first the majority of legislation still originated with the king or his council: even as late as the reign of Henry VII more Parliamentary statutes begin with the phrase "The king remembering" than with the words "Prayen the commons."

At the present day a seat in the House of Commons is eagerly sought after, while representation in Parliament is one of the most prized rights of the people. This was not so in the Middle Ages. Constituencies (especially the boroughs, which were taxed at a higher rate than counties) were always trying to escape from the burden of representation, since they had to pay the expenses of their members. Moreover, it was very difficult to find men who were willing to undertake the unpopular task of

representing a constituency in Parliament. There were rarely any election contests until the latter half of the fifteenth century. The knights of the shire chosen by the county of Oxford at one election fled the county pursued like criminals by the sheriff, who captured one and forced him to do his duty. The other escaped. Recent research has revealed the fact that in the fourteenth century, while the number of members elected to the House of Commons was over three hundred, rarely did as many as a hundred actually attend. The chief delinquents were the borough members.

One of the most important aspects of Parliamentary history in the fourteenth and fifteenth centuries was the gradual increase of the power of the Commons. In the sphere of finance they began to challenge the king's right to impose taxation without their consent. In 1340 they forced Edward III to accept the principle that extraordinary taxation could only be imposed with the consent of the Lords spiritual and temporal and the Commons in Parliament assembled. This principle was applied to the customs duties known as tonnage and poundage, which were regularized in the later years of Edward III. The Lancastrian kings accepted this rule. But the Yorkists and Tudors adopted various expedients of extra-Parliamentary taxation, such as benevolences, etc., which were later the cause of trouble between Commons and Crown when the former became powerful enough to challenge this infringement of their rights.

Another expedient adopted by the Commons in order to limit the financial power of the Crown was the 'appropriation of supplies.' Occasionally when making a money grant they would define the purpose for which it was to be spent. But it was very difficult to exercise any real control over the way in which the Crown spent its revenues; no really effective method was devised until the latter half of the seventeenth century. At the present day this is a very powerful weapon in the hands of Parliament; the House of Commons allocates every penny of the revenue for some specific purpose. The Commons also began to make demands for audits of accounts in the Middle Ages. Here again, however, they were unable to construct any satisfactory system, but the fact that they were alive to the constitutional importance of such things was a foreboding of future struggles.

In the sphere of legislation the Commons made little progress toward the establishment of control. The legislation of the Middle Ages emanated chiefly from the king. One principle, however, the Commons were able to enforce, namely, that all legislation should be enacted by the king in Parliament. Nothing was valid unless it was done in the presence of, and received at least the formal assent of, Parliament.

One other technical point remains to be noted regarding the Parliaments of the Middle Ages—the franchise qualifications. In the thirteenth and fourteenth centuries probably very few people voted

in the elections of the knights of the shire. The elections were held in the county court, attendance at which was regarded by the smaller freemen as a burden. In fact, in 1294 a statute had been passed making the possession of land worth forty shillings a year the qualification for summons to a jury in the county court. In the earliest Parliamentary elections it was these jurors who attended to elect the knights of the shire. No one considered this a privilege; no one ever spoke of his 'right' to attend. The sheriff, who convened the county court for the purpose of the election, was at first chiefly concerned with the problem of getting sufficient voters to turn up. The word 'liability' must be substituted for the word 'right' in order to get the correct attitude of mind regarding representation at this time. Jurors were liable to attend for the election of knights of the shire, who in their turn were liable to be called upon to represent their constituency; both jurors and knights would, in the great majority of cases, have preferred to escape from this liability.

Toward the end of the fourteenth century, however, a change occurred. The Commons were beginning to assert themselves in Parliament; the magnates were coming to the conclusion that the king's power could best be checked through Parliament. The vote, therefore, gradually became a privilege, larger numbers of voters began to appear at elections, and at the same time the greater landed proprietors, who were now anxious to 'control'

elections, began to agitate for a more restricted franchise. So in the fifteenth century various Acts of Parliament were passed imposing limitations on the franchise. In 1413 it was enacted that both voters and members must be residents in their particular counties. In 1430 the famous Act was passed which, except during the Commonwealth period, regulated the county franchise until the great Reform Act of 1832. It provided that the vote was to be exercised only by those freeholders, resident in the county, whose land was of the annual value of forty shillings.

In the case of the boroughs the usual rule was that the voter must be a 'freeman' of the borough. But since the definition of freeman varied very much according to the particular type of charter secured by the borough, it often happened that, while in one borough every owner of a hearth, or in another every man who paid his share of local taxes, was entitled to vote, in some only the members of a small clique were enfranchised. But boroughs were even more anxious than counties to escape the burden of representation in Parliament. In the reign of Edward III the borough of Torrington petitioned the King to exempt it from its obligation to send members to Parliament, and won its petition. Unrepresented boroughs not only saved money through not having to pay the expenses (2*s.* a day) of their members, but were more lightly taxed. Occasionally, to save expense, different boroughs in the same county would combine to elect the same representatives.

But in the fifteenth century boroughs seem to have become alive to the importance of representation, though not to the same degree as the counties. Throughout the medieval period of Parliamentary history, though only thirty-seven counties, as compared with a hundred and sixty-six boroughs, were represented in Parliament, the majority of members of the House of Commons were knights of the shire.

Under such circumstances there could be no such thing as 'responsible government.' No real attempts were made in the Middle Ages to secure the general responsibility of the executive (*i.e.*, the Crown and its ministers) to Parliament. Occasionally Parliament forced the king to dismiss unpopular ministers. The usual method of attack upon the ministers of the Crown was by a procedure known as 'impeachment,' whereby the Commons as accusers would lodge formal accusations before the Lords acting as judges. This became on occasions a mighty weapon in the hands of Parliament. It was first used in 1386 against two ministers of Edward III, Latimer and Lyons. But it was not often applied, and was quite ineffective if the king chose to dissolve Parliament and so end the proceedings. Until at least the latter half of the seventeenth century ministers regarded themselves as responsible to the king alone, and not to Parliament.

§ 17. **The King's Council in the Later Middle Ages.** In an earlier section it has been pointed out that it was the custom for the feudal kings at certain times of the year to summon councils composed

of their tenants-in-chief. These bodies were called 'Great Councils.' Bnt we have also seen that from a very early time the king had certain trusted members of his household, and, as time went on, certain ministers of State, who were constantly in attendance upon him and formed a sort of permanent standing committee to which most of the royal business was referred for opinion or settlement. This became known as the 'King's Conncil.' As a result of the development of the fnnctions of the Curia Regis in the twelfth and thirteenth centuries the bnsiness of this Council increased to a marked degree in both amount and importanee. Its activities, too, became more clearly distinguished from those of the Cnria Regis. Whereas the latter's fnnetions were almost exclnsively judicial, the work of the Council was to deliberate npon matters of daily administration and tender advice to the king. During the minority of Henry III in the thirteenth century it acted as a conncil of regency. Its importance as a department of government in the later years of Henry III is evident from the fact that the *so-called reforms* advocated by the barons were simply attempts on their part to control the King's Council. The greater barons wished to assert their right to attend the Council, which was to be a formal body limited in number.

Edward I, however, refused to accept this interpretation of the Council. Under *him it did*, indeed, become a formal body: its members took a formal oath as councillors; bnt summons to the

Council depended purely upon the will of the King, and no man, of whatever status he might be, could claim any right to be consulted. We have already seen how in the later years of the thirteenth century a large and increasing amount of judicial business came before the Council in the form of petitions, and how this was one of the factors which contributed to the origin of Parliament. Judicial business, as we have just said, was the especial province of the Curia Regis. It was usual, therefore, for these petitions to be sorted out before the Council actually met; those that could be dealt with by departments of the Curia Regis were sent to their respective departments for disposal. But there always remained a residue which could not be dealt with by any particular court. These were reserved for the consideration of the Council in Parliament, and, as has already been shown, were the earliest germ of the type of Parliamentary legislation originating in a petition of the Commons. It will be observed, therefore, that when Parliament first developed as an institution not only was its contact with the Council a very close one, but the respective spheres of the two bodies were by no means clearly defined.

In the reign of Edward II the greater barons made another determined attempt to capture the Council and mould it according to their ideas. So they appointed twenty-one Lords Ordainers to govern the country and draw up proposals for 'reform.' Although these, like the Provisions of Oxford (1258), were never actually carried out, they are of interest

to the student of the Constitution as reflecting the true nature of the political aims of the barons. Their chief demand, for instance, was that a 'Parliament,' controlled by, and almost exclusively composed of, barons, should be summoned every year and should have complete control over the ministers of the Crown. It is perhaps unnecessary to point out that had the Lords Ordainers successfully carried out their proposals in practice our modern Parliament could not have developed.

As the fourteenth century progressed and the composition and functions of Parliament became more and more definite, so the confusion between its sphere and that of the Council disappeared. Their methods of summons had always been different. Whereas the Council was summoned by writs under the Privy Seal (Private Seal) issued by the Lord Privy Seal, Parliament was summoned by writs under the Great Seal issued by the Lord Chancellor, who himself presided over meetings of Parliament in the absence of the king. The fundamental fact is that while Parliament was in essence a political body the Council was part of the king's household. Every great feudal baron in those days maintained a large household and had his council. Thus the King's Council was but the counterpart on a broader scale of the personal council of a great baron. In the Middle Ages its functions were not clearly defined: its duties were many and various, and often cannot be clearly distinguished from those of other bodies. It will be well to notice one example of this.

As the activities of Parliament became increasingly more political so it had less time to devote to individual petitions. Before the end of the fourteenth century it adopted the practice of referring these petitions to the Council. If the latter decided a petition it met for the purpose in a room called the Star Chamber. Its decision would be entered in the Rolls of Parliament as a case decided "by the authority of Parliament." Sometimes, however, the Council in its turn referred petitions to the Court of Chancery for settlement. These were usually petitions against the operation of the ordinary law of the land in cases where its incidence was claimed to be unfair to particular individuals. They claim relief "for the love of God and that peerless Princess His Mother, or for His sake who died on the Rood Tree on Good Friday." Chancery would decide these matters in accordance with the principles of equity which were being developed inside its walls. As social life became more complex so numbers of cases of this sort were bound to crop up.

In the fourteenth and fifteenth centuries it became particularly difficult to get together full meetings of the Council; so many councillors were busy with special duties and scattered about in different places. The king began to consult, therefore, with a selected few only of his councillors. Their meetings were usually secret and at first probably quite informal. The first instances of this practice that we have are in the reign of Edward II. The term 'secret' was applied to this body—Concilium Secretum. Later

on it was known as the King's Private Council or the Continual Cnuncil. In Tudor times this became a definite body with its separate clerk and records. Before the end of the Middle Ages the Privy Council was rarely a strong body, except in the reign of Richard II. It was, indeed, the reflex of the Crown, which owing to the increasing lawlessness of the country in the fourteenth and fifteenth centuries was particularly weak. Overmighty barons, although they might fail personally to control the King's Council, could nevertheless influence elections to Parliament and largely dominate its proceedings. In the reign of Henry IV the Council was strictly controlled by Parliament, and the King was forbidden to act without the approval of his Council. But the country was neither better governed nor constitutionally governed. Parliament was merely the tool of powerful subjects whose factions and feuds throughout the countryside reduced the maintenance of law and order to a farce. Naturally, therefore, kings like the Yorkists and Tudors who desired to reclaim the country from this embarrassing and disastrous condition tended to use more and more the little inner ring of councillors whom they could trust and with whom they could confer secretly. The real history of the Privy Council does not begin until the days of the New Monarchy.

CHAPTER VII

THE NEW MONARCHY (1485–1603)

§ 18. **The Royal Power.** The weakness of the Lancastrian dynasty in the fifteenth century gave to the disorderly feudal elements of the country an opportunity too good to be missed. In the various localities of England the administration of law and order broke down completely. Juries were terrorized or bribed; shire and hundred courts were intimidated by baronial factions, the members of which came armed and in force to support their respective sides in civil suit or criminal action; holders of feudal 'liberties' oppressed the people of their neighbourhood, carried on private warfare, and flouted the central authority. From petty manorial lords to the greatest nobles of the realm all the upper classes were implicated in the maintenance of these anarchical conditions. We hear of a judge waylaying a peer with five hundred armed men and later pleading before Parliament that he was unaware of any illegality in his action. A Venetian visitor wrote home that nowhere in the whole world were there so many thieves and robbers as in England. "The law depends upon a man's friends," ran an old saying of the time.

In the midst of all this confusion and disorder Parliament, controlled as it was by the most

anarchical elements of the state, was worse than useless. The Council and Privy Council too, hopelessly divided by the strife of the Yorkist and Lancastrian factions in the reign of Henry VI, ceased to possess any semblance of unity, without which effective administration could not possibly be carried on. Gradually the local faction fights were merged into the greater struggle of York and Lancaster, won temporarily by the House of York in 1461, and finally by Henry Tudor, the representative of the rival house, at Bosworth Field in 1485. These "Wars of the Roses" were fought out by the baronial classes and their retainers. They caused the almost complete extinction of the mediæval baronage of England and its total eclipse as a political factor. The country, wearied with the incessant civil disorder, was ready to accept the strong rule of any man who had sufficient force of character and political insight to cope with the appalling situation. Such a man was Henry Tudor, who ascended the throne in 1485 as Henry VII.

Some writers have thought that the rule of England's three Lancastrian kings—Henry IV, Henry V, and Henry VI—was her first essay in constitutional government. Their rule has been called the "Lancastrian Experiment," since they were more dependent upon Parliament than either their predecessors or their successors for more than a century after their fall. But the term is misleading. There was nothing 'constitutional' in the modern sense about the government of the

Lancastrians. In the first place the Constitution was so vague and indefinite, and depended so little upon law, that no one knew exactly what was or was not constitutional. The Parliament which controlled the king was in no way representative of the nation, but was entirely in the hands of baronial factions, who, so far from having any theory of constitutional government, used their weapon to prevent the Government from carrying out its ordinary normal functions, in order that they themselves might indulge their desires for feudal licence uncontrolled by any superior authority. Real constitutional government cannot develop in a country in which the mass of the people has neither political education nor even political consciousness. In fifteenth-century England the tie of locality was still much stronger than that of nationality. Cornishmen rebelled when asked to pay taxes for a war fought on the borders of Scotland. Even in the seventeenth century the inland towns and counties objected to paying the 'ship money' demanded for the defence of external trade and the coastal districts. Until Englishmen had attained to some real degree of politieal consciousness there could not even be experiments in constitutional government, since its very essence lies in the association of rulers and ruled in some form of co-operation and mutual responsibility.

The accession of Henry VII brought with it such an increase of the royal power as had never previously been witnessed in England. The baronage as a

political party was non-existent; Parliament was discredited; local government was at a standstill. The bulk of the nation, which longed for peace and order, felt that only through the royal power could the normal functions of the body politic be restored. So at the beginning of the Tudor period we no longer find the barons or Parliament asserting a right to control the royal power. Everywhere the prerogative of the king was dominant. The most important department of the Constitution was naturally, therefore, the Council. In fact, the Tudor period in English constitutional history has not inaptly been termed "the Golden Age of the Council."

§ 19. **The Councils of the Tudor Period.** In the Yorkist period Edward IV and Richard III had set about the task of restoring an organized Council with regular functions. Henry VII was a man of exceedingly independent mind: he had few, if any, really intimate advisers. But he had a large number of 'counsellors,' nearly a hundred in all, many of whom neither held offices of high rank nor possessed political influence. We have no list of these people, and we know that they never met together as a body. They were, as Professor Pollard has shown, a civil service and not a council.

Henry VII, however, did possess a Council, which had its own clerk and records. We even find in his reign references to a 'President of the Council,' who probably presided over meetings of the Council in the absence of the King himself. The members

of the Council were appointed for life, took an oath of admission, and were paid regular salaries. In the reign of Henry VIII a councillor's salary was £100. Their numbers varied during Henry VII's reign from twenty-two at the beginning to forty-one toward the end. The Council cannot be said to have exercised any check upon the power of Henry VII, who never seems to have asked its advice as a body. Probably he never brought the most important matters before it until he had made up his own mind; so Maitland suggests. It thus only registered decisions already arrived at by the King personally.

The most important function of the Council in Henry VII's reign was its judicial work in the Court of the Star Chamber. This was a development of the judicial work of the Council that we have already noted in the last chapter. Under Henry VII the Council sitting in the Star Chamber became the royal instrument for enforcing the necessary respect for law and order throughout the country. Corrupt juries were haled before it and punished. Overmighty subjects who intimidated the local law-courts were similarly treated. All and sundry disturbers of the peace, of whatsoever degree, who were too powerful to be dealt with by the local courts and juries were summoned before the Council sitting in the Star Chamber and ruthlessly tamed by fines or imprisonment. Sir John Fortescue, who had been Chief Justice in the reign of Henry VI, in his treatise *On the Governance of the Kingdom of England* described the Star Chamber as a "national

blessing." The proceedings of the Council in the Star Chamber were public, but its rules of procedure were not modelled upon those of any other court: they were developed to meet what were considered to be the special demands of the situation. Thus defendants were questioned by the Court and, if they refused to answer, were either imprisoned or in some cases put to torture. No jury was employed. The Council arrived at its decision purely by a majority vote.

For many years the early history of the Star Chamber, and in particular the use made of this court by Henry VII, presented researchers with baffling problems. The State Papers of the period contain reports of all sorts of transactions (besides judicial ones) in the Star Chamber, and very conflicting accounts of its composition and membership. In 1922, however, Professor Pollard contributed three articles on the subject to *The English Historical Review* and threw a beam of light upon this *terra incognita* of historians. It seems that the term 'Star Chamber' was applied not to a single room, but to "a three-story building with at least three rooms and a kitchen in it before the end of the Tudor period." The largest of the three rooms was used by the Council when it sat for judicial purposes. A small inner room was used by the inner ring of councillors, the Privy Council, when they sat secretly to deliberate or transact administrative business of a special nature. Here the half-yearly assay of the mint took place; here too Henry VIII in 1538 passed

the order prescribing the use of English Bibles in all the churches. The Star Chamber rooms were used for a multiplicity of different functions, and it must not be supposed that acts done in the Star Chamber were necessarily done by what in later times became known as the Court of the Star Chamber.

But the greatest stumbling-block to a clear understanding of the history of the jurisdiction of the Council in the Star Chamber is an Act of Parliament (3 Henry VII, c. 1) of 1487, which has been generally regarded as actually creating the Court of the Star Chamber. Curiously enough, the words 'Star Chamber' do not appear in the Act. Nor do they appear in an Act of 1529 which amended it. But the words *Pro Camera Stellata* were written in the margin of the Rolls of Parliament against the Act of 1487. Professor Pollard has shown that these words were not inserted until about a century after the Act was passed, and were based upon a complete misconception of the nature of the Act on the part of the person who wrote them. This Act set up a special committee, which sat in private to try persons "of great authority, office, and of council with kings of this realm" who committed offences involving "destruction of the kings and the near undoing of this realm," but for which the ordinary law provided no remedy. It was a committee to try actual members of the King's household who prevented the laws of the land from being properly administered. Unlike the real Court of the Star Chamber (*i.e.*, the Council sitting in the Star Chamber for

judicial business) it had no clerk and kept no records, though it probably sat in one of the rooms of the Star Chamber. A persistent tradition has it that the Earl of Oxford was fined very heavily by the Star Chamber for disobeying the law regarding the keeping of retainers. There is no record of this in the proceedings of the Star Chamber. As Oxford was a personal friend of the King's and held high office it is extremely probable that he was tried and fined by the committee set up by the Act of 1487—but this was not the Court of the Star Chamber.

There were, therefore, two aspects of the Council in the reign of Henry VII. On the one hand, there was the Council which attended upon the King, the business of which was almost entirely executive. On the other hand, there was the Council which sat regularly to transact judicial business in the Star Chamber. These were not two separate bodies, though if the King were absent from Westminster some councillors would accompany him, while others would remain behind to continue their judicial sessions in the Star Chamber. An individual member of the Council might be in attendance upon the King one week, and acting as a judge in the Star Chamber the next. When Wolsey became Chancellor in Henry VIII's reign the work of the Star Chamber court became even more vigorous than before, and the committee set up by the Act of 1487 seems to have ended its separate existence, members of the King's household being tried publicly by the Council in the Star Chamber. Wolsey as Chancellor

presided over the court, which became, in the words of Professor Pollard, "his megaphone and his Press agency." In this way such an enormous amount of business was attracted to the court that special provincial councils had to be created in order to relieve the pressure at Westminster. So arose the Council of Wales and the Council of the North, specially appointed sections of the Council sitting in those respective districts to perform judicial and administrative business there on the same lines and by the same methods as those employed in the Star Chamber.

After the fall of Wolsey in 1529 Henry VIII gradually collected about him a small inner ring of counsellors, with whom he discussed matters of high policy, and to whom he gave his special confidence. As time went on this inner ring completely usurped the old function of the Council as the advisory body to the King, by whose advice all matters of administration and policy were carried out. In the later years of the reign its composition and work became clearly defined, and what had in earlier times been an entirely haphazard body (just as in the case of the early history of the Council) was in 1540 a definite organization known as the Privy Council with its own clerk and records. This was the origin of the modern Privy Council. From that time onward the Privy Council was the chief executive body of the realm. The Council as a body completely lost its political importance, all the more important decisions of policy being made by the Privy Council. The Council continued to exist in theory. Privy Coun-

cillors were members of the Council; the members of the Court of the Star Chamber, the Councils of the North, of Wales, and of Ireland, were all members of the King's Council; but meetings of the whole Council were no longer summoned. Its place had been taken by the Privy Council, which from that time until its supersession by the Cabinet toward the end of the seventeenth century was the predominant executive body of the State. All the other councils were subordinate to it. In the later Tudor times the relation of the Privy Council to the Council was something like that of the modern Cabinet to the Privy Council. Members of the Cabinet to-day are Privy Councillors, but the Privy Council never meets as a body save formally to recognize the accession of a new monarch. But, whereas at the present day many men distinguished in various walks of life have the purely honorary title of Privy Councillor without having anything whatever to do with the government of the country, in Tudor times all those men who were known as 'King's Counsellors' were men who, although they might not be members of any of the Councils, yet performed governmental duties of some kind or other. The idea still lingers on in the title 'King's Counsel' given to lawyers representing the Crown in public prosecutions in Great Britain.

The original Privy Council consisted of nineteen members. They dined officially in the Star Chamber every day except Sundays during term time from the reign of Henry VIII throughout the Tudor

period. They were eligible to sit as judges in the Court of the Star Chamber, though usually other 'counsellors' sat with them there. They could resolve themselves into committees for any specific purposes, such as for trade and foreign affairs, and later, in Stuart times, for 'plantations' (colonies). They included men of all ranks chosen personally by the monarch for their special knowledge or ability. But their numbers depended entirely upon the will of the sovereign. Mary, for instance, had a Privy Council of about fifty members, a fact which partly accounts for the weakness of her rule. Elizabeth reduced the membership of her Privy Council to a more manageable number. At the time of the Spanish Armada it was about thirteen; later it diminished still further. On the other hand, the work of the Privy Council increased by such leaps and bounds during her reign that the number of its clerks had to be increased from one to four.

The most prominent feature of the English Constitution in the Middle Ages was the weakness of the executive government. Laws were enacted and re-enacted time and again, but they remained mere statements of ideals, subject to wholesale evasions even on the part of those who made them. The Wars of the Roses showed the disastrous consequences of such a state of affairs. It was the great achievement of the Tudors to remedy the disorders of the State by the creation of such an effective and powerful administration as the country had never before known. The Council was the heart of this

system. From it circulated in all directions the blood which gave life and impulse to the various parts.

§ 20. **Parliament under the Tudors.** Parliament under the Lancastrians had shown itself too weak to control the forces of disorder in the country. The Wars of the Roses in paving the way for a strong monarchy had made the continuance of Parliament as an effective part of the Constitution a doubtful proposition. In the first place, the slaughter of members of noble houses during these troublous times considerably reduced the numbers and importance of the peers. Only twenty-nine lay peers were summoned to Henry VII's first Parliament. On the other hand, there were as many as forty-nine spiritual peers in Henry VII's Parliaments. Yet their position as regards the royal power was particularly weak. The peers as a whole were backed up by no real force of opinion in the country, and in practice Henry VII and subsequent monarchs of his house had complete control over the disposal of the greater posts in the Church, though not until 1531 did a Parliamentary statute place the election of bishops unblushingly under royal control. The Tudors created few peerages, while by the dissolution of the monasteries the House of Lords from 1540 onward was denuded of something like twenty-eight abbots. It is not surprising, therefore, to find that in Tudor times the Lords played a very unimportant *rôle* in the government. In fact, not until the reign of Charles I did they once more begin as a body to pursue a more independent path.

The House of Commons too was almost powerless in the reign of Henry VII. On account of the limitation of the county franchise to the forty-shilling freeholders it was no longer truly representative of the country, while the boroughs were getting more and more under the control of royal influence or that of local magnates. Constituencies, too, for the most part were still anxious to escape from the burden of sending representatives to Westminster. On one occasion we actually find Henry VIII sending peremptory orders to a certain knight to represent Cumberland in Parliament. Most men eligible for membership of Parliament seem to have regarded it very much as men at the present day regard service on a jury—as an irksome duty to be shirked if a sufficiently plausible excuse can be found. Under such conditions the surprising thing is that Parliament survived at all. On the Continent Parliamentary institutions fell almost completely into abeyance during this period; the Cortes in Spain, the Diet in Germany, and the States General in France lost all control over the executive Governments in their respective countries. In the case of France the year 1614 saw the last session of the States General before the famous meeting of 1789, which launched the French Revolution. Yet in England, although in 1485 circumstances seemed to be most unfavourable not only to the development of Parliament, but even to its very continuance, so far from dying a sudden death it emerged from the Tudor period with largely enhanced powers, an assured posi-

tion in the Constitntion, and an exceptionally independent temper. How did this come about?

Henry VII came to the throne in 1485 with a very weak title. He certainly strengthened it by his marriage with Elizabeth of York, but he felt it necessary at the ontset of his reign to secure the support of Parliament. His accession, therefore, was legalized by an Act of Parliament, and during the early years of his reign he summoned frequent Parliaments. After the first twelve years of his reign, however, when his position was quite secure, his attitude toward Parliament underwent a change. There was only one session of Parliament between the year 1487 and Henry's death in 1509. Such a proceeding was solely possible because the King was financially independent of Parliament. On the only two occasions when Henry asked Parliament for a 'subsidy' its imposition caused rebellions. The method of Parliamentary taxation by the time-worn expedients of fifteenths and tenths was out of date and resnlted in mnch unfairness. These were no longer proportionate amounts: each locality made a fixed payment, which had not been revised since the early fourteenth century. While the land-owners and country-people still paid by far the greatest proportion of a 'subsidy,' the prosperous townsmen and the rich merchants contributed practically nothing. So Henry VII relied not at all upon Parliamentary taxation, but preferred to extort 'benevolences' from those of his subjects who might reasonably be judged to have prospered

under his *régime* bnt who did not pay their fair share of ordinary taxation. Benevolences were a sort of rough and ready attempt on the part of the sovereign to make a fairer distribution of the incidence of taxation. But they were not Parliamentary taxation. On the other hand, it is difficult to say whether they were illegal or not, as so much of the royal revenue in those days did not receive Parliamentary sanction. No Parliament then expected the king to ask its permission to collect customs duties or the rent from the royal estates. Still, it was a constitutional understanding that the king could impose no new taxation without consent of Parliament; but Henry VII would probably have denied that a benevolence was a tax. At this time, too, Parliament had not made up its mind on the score of benevolences. In Richard *III's* reign it had declared them to be illegal, but it actually enforced their payment when imposed by Henry *VII*.

Henry VII's control over legislation was as complete as his financial independence of Parliament. Most Acts originated with the King and not with the Commons. They were drafted by the royal judges before their submission to Parliament, and in many cases the King personally added 'provisions' to them in the course of their passage through Parliament. It was possible for the King to interfere a great deal with legislation, since in those days procedure had not become regularized, and bills might be read once only or any number of times before going up for royal assent.

During the first few years of the reign of Henry VIII Parliament met *frequently*, and the House of Commons began to evince a very hostile attitude toward the Church. With the advent of Wolsey, however, a serious attempt was made to rule without summoning Parliament. Owing to the extravagance of the young King, who very soon exhausted his father's hoard, the Government could only carry on independently of Parliament by resorting to arbitrary methods of taxation to an extent hitherto unparalleled. The only Parliament summoned during the long ascendency of Wolsey was that of 1523, when the royal demands for money met with furious resistance and had to suffer considerable reduction at the hands of the Commons. But Parliament was *still* powerless against a Government strong enough to dissolve it and carry on successfully without it.

The fall of Wolsey coincided with the summons of what has been called the Long Parliament of the Reformation, which sat from 1529 to 1536. This represents the turning-point in the history of Parliament. For the first time in its history we find foreign ambassadors taking a keen interest in its doings and reporting them in their letters home. Efforts are made by the King's ministers to influence the elections and to 'manage' the House of Commons. Legislation of an unprecedented nature is passed. It was, indeed, a very important step in the development of Parliament that Henry VIII should have considered it necessary to carry out the separation

from Rome and the subjection of the Church of England to the State by means of Parliamentary legislation. He thereby created a great constitutional tradition: that the king in Parliament was the legal sovereign in the Constitution. He may be said to have deliberately fostered the growth of Parliament. In the seven years during which the Reformation Parliament sat the Commons had opportunities, hitherto lacking, of learning how to act together. The nation too began to regard Parliament as something of a more permanent type than previously. In Elizabeth's reign there were more long Parliaments. Her second Parliament sat from 1563 to 1567; her fourth Parliament lasted from 1572 to 1583.

So in the time of the Tudors the medieval attitude toward Parliament began to die out. A Parliamentary career began to be an ambition worthy of consideration; contested elections began to be keenly fought. Henry VIII's later Parliaments no longer tamely passed all the Bills put forward by the Crown. Many Bills were either rejected or amended, and although by the Statute of Proclamations of 1539 Parliament gave the force of law to royal proclamations it was firmly understood by both parties that royal proclamations were neither to create new law nor in any way to contravene existing law. Actually Henry VIII took no important step without first securing Parliamentary authorization. The fact that he always managed to secure it does not prove the subservience of his

Parliaments; rather does it show up the community of interests between King and Parliament. Henry's aims, of course, were perfectly selfish; he knew that by associating Parliament with himself in all important matters of State he was strengthening his own hands. He did not realize that by so doing he was making Parliament conscious of its power and privileges in a way such as it had never before been.

Henry VIII also increased the numbers of the House of Commons. In 1535 by an Act of Parliament Wales was incorporated in the English Parliamentary system; each of her twelve counties was given one member, while eleven Welsh boroughs were to be represented by one member apiece. Five more English boroughs too were given the franchise. Henry VIII has been accused by historians of attempting to pack Parliament. He did occasionally interfere with elections to secure the choice of royal nominees, but such interference was rare and was not always successful. Again, there is no evidence to prove the wild assertion that he used his power of creating new Parliamentary boroughs in order to pack the House of Commons. He created so few new boroughs that on that score alone the case breaks down. It is certainly significant that none of his contemporaries ever accused him of sinister motives in the creation of new constituencies. It is possible that the large numbers of new boroughs created by Northumberland, Mary, and Elizabeth were due to the royal desire to influence the

composition of the House of Commons, but it cannot be proved. It is much more probable that the increase of representation was due chiefly to a real desire for it on the part of the country. The success of Tudor sovereigns like Henry VIII and Elizabeth was due very largely to the fact that they identified their own interests with those of their people; their government inspired confidence and was popular. Had they not been supported by the vast majority of opinion in the country they could not have carried out one single item of their policy. It must be remembered that they possessed no standing army, no organized civil service, and only a very precarious revenue.

In the reign of Henry VIII Parliament asserted its privileges more definitely and with greater confidence than ever before. Before Tudor times the Commons had asserted their right to freedom of debate without interference from the king. But this was not generally recognized until the year 1541, when for the first time the Speaker at the beginning of session declared freedom of speech to be one of the ancient and undoubted rights of the Commons. Henceforth this became the regular practice. Another privilege claimed by the Commons was that of freedom from arrest (except on criminal charges) during the session of Parliament. These two privileges were respected and maintained by Henry VIII. Elizabeth, however, quarrelled with the Commons on more than one occasion over the question of freedom of debate. She tried unsuccessfully to

forbid the Commons to discuss matters such as the succession and her own marriage, though the House promised her to refrain from discussing religious matters. But on several occasions the House itself punished members who in its opinion expressed their views too freely. In these quarrels over privilege between Elizabeth and her Parliaments we witness the beginnings of the divergence of interests between Commons and Crown which were to be so fruitful a source of trouble in the Stuart period. The origin of the seventeenth-century struggle between king and Parliament must be sought for in the reign of Elizabeth.

Under Elizabeth the legislative activity of Parliament was even greater than in the time of Henry VIII. Not only was the Settlement of Religion carried through by means of Parliamentary statutes, but Acts of great bulk and far-reaching importance such as the Statute of Artificers (1563) and the Poor Law (1601) were passed, which affected the whole social structure of the realm and laid down the basis of similar legislation for the next two centuries.

We have already seen that the relations between Elizabeth and her Parliaments were not so good as those prevailing between Crown and Parliament in the days of Henry VIII. The defeat of the Spanish Armada in 1588 tended to make them even worse. While the danger of religious civil war or of Spanish domination haunted the minds of Englishmen they were willing to allow the Queen a personal authority which every one agreed was necessary for the safety

of the kingdom. But when danger of this kind was no longer imminent Parliament began to evince a keen desire to reduce the royal power within narrower limits. The best example of this was its famous quarrel with Elizabeth over monopolies in 1601. It is quite evident now to us that long before the death of the Queen serious difficulties were arising on the subject of Parliament's control over taxation. On account of the serious shrinkage in the value of money due to the enormous influx of gold and silver into the European currencies consequent upon the Spanish exploitation of their sources in Mexico and Peru, the royal revenue became less and less adequate to meet the demands made upon it by the increasing expenses of government. Elizabeth found it very difficult to make ends meet, and was forced to rely more upon Parliamentary grants than any of her predecessors. Parliament, on the other hand, began to assert larger claims to control over taxation, and it was of no small significance that when in 1601 the time-honoured doctrine of the Queen's right to all the lands and goods of her subjects was proclaimed by Mr Serjeant Hele in the House of Commons it was recorded by one of the members present that "the House hummed, and laughed, and talked." The era of constitutional struggle had begun.

§ 21. **The Church.** The most spectacular of all the constitutional changes carried out by the Tudors was the establishment of royal supremacy over the Church. This, as every one knows, was part of a great movement known to us as the Reformation,

which spread over the greater part of Europe during the first half of the sixteenth century. On the Continent the great *reforming* movements ushered in by the teaching of Luther, Zwingli, and Calvin had their origin largely in the widespread spiritual unrest created by the Revival of Learning. They started as movements for the reform of doctrine, and only in their later stages did they become political. In England, on the other hand, if we discount the Lollard movement inaugurated by Wycliffe at the end of the fourteenth century, the Reformation began over a purely constitutional and political question. Henry VIII in seeking to procure the nullity of his marriage with Catherine of Aragon was led through Papal opposition to assert the royal authority over the English Church to the complete exclusion of the time-honoured claims of Rome.

From the constitutional point of view, quite apart from its religious results, this was indeed a revolutionary step. Throughout the Middle Ages Church and Crown had been what we may call co-ordinate jurisdictions and authorities. Each had checked the authority and jurisdiction of the other. The Church had maintained the independence of her courts of law even against the ablest of medieval kings, Henry II. Clerics as such owed allegiance primarily to Rome. The authority of the Pope over clerics in England had always competed successfully with the royal authority over them as Englishmen. In Germany in the Middle Ages three great lines of

enforced by the two Parliamentary Acts of Uniformity (1548, 1552). The present English Prayer-book originated at law as a schedule of an Act of Parliament—the second Act of Uniformity.

After the interlude in the history of the Church of England caused by Mary's revival of the domination of the Pope the reversal of Mary's work was carried out by the Crown in Parliament. In 1559 Elizabeth's first Parliament passed the two Acts of Supremacy and Uniformity which again asserted the supremacy of the Crown over the Church and enforced the use of the Book of Common Prayer. But Elizabeth's Act of Supremacy did not designate her as "head of the Church"; it gave to her the less flaunting title of "supreme governor of this realm . . . as well in all spiritual or ecclesiastical things or causes as temporal." Then, too, Elizabeth's Act of Uniformity only insisted upon outward conformity with the ritual of the Protestant English Church as established by Government. The question of doctrine was not immediately tackled, and when the Elizabethan Thirty-nine Articles were published later in the reign, acceptance of them was demanded only of the clergy, Government servants, university graduates, and lawyers. If nationalism was the keynote of Henry VIII's religious policy it was even more strikingly so in the case of Elizabeth's. Religious compromise in the interests of national unity was her aim. "The result was perhaps less truth, but greater order," says a well-known writer. The national Church established by a national Govern-

ment was particularly strong, since disobedience to the Church constituted treason against the realm. To most Englishmen the safety of the State was of vastly greater importance than the form of the Church. Mary's greater zeal for the Church has caused her to be branded with the epithet of 'Bloody'; Elizabeth, whose executions of heretics were equally numerous, goes down to history as 'Good Queen Bess' because she was the defender not of the Faith, but of the State.

Finally, it must be remembered that the supremacy of State over Church established by the Tudors was the supremacy of the king and not of Parliament. In the reign of Elizabeth Parliament did not willingly accept this view of the case, and on many occasions quarrelled with the Queen over its right to discuss religious matters. The power over the Church wielded by its head was a despotic one, whereas as ruler of the State the English Queen was a limited monarch. It was easy for confusion to arise between these two positions. This became especially evident when the first two Stuart kings tried to maintain the same power over the State as they wielded over the Church. So we shall not be far wrong when we assert that the establishment of royal supremacy over the Church by the Tudors was one of the chief causes of the constitutional struggles of the seventeenth century.

§ 22. **Local Government.** The development of local administration was one of the most important features of the Tudor century. In England local

institutions have always been important and active. They have been the firm base upon which English political liberty has gradually been constructed. In taking their share in local administration and local politics Englishmen have received a training which has fitted them to have a voice in, and undertake the greater responsibilities of, the administration and politics of the nation. We have seen how in Anglo-Saxon times the local units of the shire, hundred, township, and burgh were the only real, effective institutions of government in the country. Then in feudal times the manorial courts developed largely at the expense of the township, while the shire and hundred courts came so strongly under the influence of feudalism that their free, independent character almost disappeared. From the time of Henry II the royal courts gradually absorbed most of the judicial business of the shires; but with the institution of Parliament the shire courts became the basis of the representative system. A new function was thus created for them, which they were to retain down to the middle of the nineteenth century. On the other hand, after 1278 the civil jurisdiction of the county courts was limited to cases involving less than forty shillings of value. In the fourteenth and fifteenth centuries the local courts languished, partly owing to the difficulty of getting the smaller freemen to attend them and partly through the lawlessness of the 'over-mighty subjects' who were too powerful to be checked by any merely local authorities.

Throughout the Middle Ages the sheriffs had been the representatives of royal power in the shires. Under the Norman *régime* the sheriff had collected the 'ferm' of the county and paid it into the king's treasury. Now the ferm was made up of the income from the king's manors in the county and the proceeds of royal justice in the local courts. From the Conquest to the thirteenth century the sheriff was the chief local executive officer in England. In addition to his financial duties he was responsible for the maintenance of order and the punishment of condemned criminals. He summoned and led the fyrd. He presided over the shire court and received the royal justices when they came to the county. But sheriffs were somewhat unruly gentlemen, who tended to use their position to increase their own personal power and fortunes. Their duties, therefore, were gradually limited during the thirteenth and fourteenth centuries, and new officials were created to take over some of the functions hitherto exercised by the sheriffs.

As early as the end of the twelfth century trustworthy knights in each shire were sworn in to undertake the maintenance of peace in their respective shires. In the thirteenth century this practice was further developed. The duty of these 'Conservators of the Peace' was to see that cases reserved for the royal justices were *really brought* before them. In 1360 in the reign of Edward III an Act of Parliament was passed which ordered the appointment of justices of the peace—as they were soon

afterward called—with powers to try cases of felony and trespass and commit to prison those found guilty. Somewhat later, in the reign of Richard II, they were instructed to hold their sessions four times a year. From this there later developed what are known as Quarter Sessions, which are still held at the present day.

In Tudor times the justices of the peace became under the Privy Council the real local rulers of England. All sorts of new duties were assigned to them in addition to those already existing. They were responsible for the police system and for putting down riots. When after the dissolution of the monasteries the parish was made the unit for the relief of the poor the justices of the peace were made responsible for the working of the system. The famous Statute of Artificers of 1563 empowered them to regulate the wages of all craftsmen and enforce the national system of apprenticeship. The supervision of highroads and the maintenance of weights and measures also was carried out by the Tudor justices of the peace. They have been aptly termed "the Tudor maids-of-all-work." The Tudor sheriff found himself merely a returning officer in Parliamentary elections and executive officer for carrying out sentences imposed by the courts upon criminals. Even his military functions were taken from him and given to a new officer, the Lord-Lieutenant, created in the reign of Mary and still in existence now.

In the Middle Ages a small local division known

as the parish existed for religious purposes. It grew up round a church, which it built and maintained, and in which centred its chief and almost only cultural interest. Gradually the church became the school and meeting-place of its neighbourhood, and, as feudalism decayed and the manorial courts became less powerful, so the parish meeting began to become more important. The Tudors greatly extended the functions of the parish by making it the unit of local government. Henry VIII gave to it the duty of organizing poor relief. Mary assigned to it the duty of repairing and maintaining the roads. Elizabeth not only further developed its powers for the relief of the poor by the great Poor Law Act of 1601, but created the 'poor-rate,' which has since become the basis of local taxation and has been applied to many other purposes besides providing funds for poor relief. From Elizabeth's day onward the parish meeting or vestry played a large part in the conduct of local affairs.

Town government in Tudor days remained much in the same state as it had been in the Middle Ages. It was regulated according to the royal charter held by each individnal town. In most towns government was in the hands of a council which represented only the richer burgesses. Technically all the freemen of the borough were eligible for office, but in most cases only a few privileged families exercised the rights of freemen and prevented all outside their charmed circle from any share in them. As time went on this state of affairs persisted to such

a degree that not until the Municipal Corporation Act of 1835 did the ordinary inhabitants of a borough begin to exercise any control whatever over its internal government. The Tudors also did nothing to revive the old courts of the shire and the hundred. The former still existed with its very limited civil jurisdiction; the latter passed almost completely out of consideration and gradually died a natural death.

We may, therefore, sum up by saying that the Tudor period was one of transition from the medieval system of local government to its more modern forms. The Tudors practically created the system in vogue until the nineteenth century, and, notwithstanding the far-reaching nature of the changes then introduced, the Tudor system still remains the framework of modern local government.

CHAPTER VIII

THE GREAT CONSTITUTIONAL STRUGGLE (1603–88)

§ 23. **The Legacy of the Past.** In the Tudor century English national sentiment had developed to a degree hitherto unknown. Henry VIII in throwing off the fetters of Rome, and Elizabeth in circumventing the designs of Philip II of Spain and Mary Queen of Scots, had carried to success a policy which highly commended itself to the great bulk of the nation. But with the year 1588 the real work of the Tudors for England was completed. No longer had the English nation any cause for fear on the score of its political and religious independence. Men had supported or acquiesced in the high-handed methods of the Tudors because of the external and internal dangers which threatened England before the destruction of the Spanish Armada. After that event, however, when English security was no longer threatened, men's minds were turned toward the question of personal liberty, and they began to chafe more and more under the restraints imposed upon it by the Tudor methods of government.

Parliament, particularly after 1588, began to show increasing signs of an independent temper, and to become critical of Elizabeth's government. Its

alliance with Henry VIII against the Church had provided it with a rare apprenticeship in matters of State. It had a greater estimation of its own powers, privileges, and competence than ever before. A new age of Parliamentary history had dawned when Parliament was bent upon asserting itself against the unchecked power of the Crown. Even had Elizabeth in 1603 been succeeded by a sovereign as popular and statesmanlike as herself the struggle between Crown and Parliament could not have been prevented. A striking instance of the position of Parliament at the end of Tudor times is given in a book called *The Commonwealth of England*, written by Sir Thomas Smith, one of Elizabeth's Secretaries of State, and published in 1583. Most modern works on Tudor constitutional history quote it, but it is so significant that it cannot be too often quoted. It runs thus:

> The most high and absolute power of the realm of England consisteth in the parliament. . . . That which is done by this consent is called firm, stable and *sanctum*, and is taken for law. The parliament abrogateth old laws, maketh new, giveth order for all things past and for all things hereafter to be followed, changeth rights and possessions of private men, legitimateth bastards, establisheth forms of religion, altereth weights and measures, giveth forms of succession to the crown, defineth of doubtful rights, whereof is no law already made, appointeth subsidies, tailes, taxes, and impositions, giveth most free pardons and absolutions, restoreth in blood and name as the highest court, condemneth or absolveth them whom the prince will put to that trial . . . representeth and hath the power of the whole realm,

> both the head and body. For every Englishman is intended to be there present, either in person or by procuration and attorneys, of what pre-eminence, state, dignity or quality soever he be, from the prince, be he king or queen, to the lowest person of England, and the consent of the parliament is taken to be every man's consent.

This, we may say, sums up the doctrine of the supremacy of the king in Parliament as it developed in Tudor times. Throughout the sixteenth century this was a partnership, but before the end of Elizabeth's reign it was evident that Parliament was becoming anxious to have a greater voice in the control of the concern, and that a struggle between the partners was imminent. The Crown as senior partner wished to maintain its superiority over the junior partner largely created by itself. That was the plain issue. So the Stuarts inherited their struggle with Parliament as a legacy from the Tudors.

But they also inherited other features of the struggle than those we have just mentioned. The Tudors left them a financial problem. The revolution of prices which had been caused by the influx of precious metals from Spanish America had made the old revenues of the Crown totally inadequate for the needs of government. Elizabeth had often been reduced to great financial straits, since Parliament entirely failed to grasp the new situation and contented itself with the medieval expedient of imposing fifteenths and tenths to supplement the royal income. These, as we have already seen, were quite

insufficient. Only a complete reorganization of the system of taxation could have put the Crown on a secure financial footing. Partly through ignorance and largely because it was anxious for reasons of its own to keep the Crown financially dependent, Parliament was unwilling to face the facts. The unpopularity of James I and Charles I only strengthened Parliament's determination on this point; it refused to pay *for a Government which it did not trust.*

But the Tudors also left the Stuarts a religious problem. The Act of Supremacy had given the Crown autocratic power over the Church, which had gradually become the instrument of the royal will. Only a monarch of such consummate tact as Elizabeth would have crushed the temptation to make autocratic power over the Church the stepping-stone to autocratic power over the State. The Stuarts succumbed to the temptation. But a new religious party, the Puritans, had grown up in Elizabeth's reign. Among other changes they strongly advocated that the English Church form of government should be brought into accord with the principles of John Calvin, and that bishops should be abolished. Elizabeth had refused to grant any of their demands, but had been unable to prevent their rapid growth as a party. Before the end of her reign, although there were divisions in the Puritan party represented by the quite different sects of the Independents and the Presbyterians, they were politically united upon one point—to abolish the royal supremacy over the Church. When James I

came to the throne the Puritans were a very strong party in the House of Commons, bitterly hostile to the unlimited use of the royal prerogative and anxious to impose limitations upon the Crown. Well indeed did James sum up the position when at the Hampton Court Conference he replied to the demands of the Puritans, "No bishop, no king."

If we are to understand aright the Stuart struggles with Parliament we must first realize that fundamentally they were an inheritance from the past. But the character and ideals of the Stuart kings intensified them and gave events the particular turn that they took.

§ 24. James I and Parliament. James I came to the throne in defiance of an Act of Parliament. In 1544 Parliament had given force of law to Henry VIII's will, whereby the Suffolk branch of his house was preferred before the Stuart branch in the matter of the succession to the throne, though the latter had the prior claim by heredity. James was also an alien. Common law, therefore, did not recognize his right to succeed to any land in England, much less to the realm itself. Actually James's succession was due in part to his own extensive intrigues before the death of Elizabeth, and very largely to the fact that the representative of the Suffolk branch, Lord Beauchamp, was an unhealthy imbecile the legitimacy of whose birth was questioned. But the circumstances of James's succession had a peculiar significance to him, since they seemed to bear out in no uncertain manner his

theory of hereditary divine right. Belief in the divine right of kings had become very general in the sixteenth century. The Tudors had undoubtedly held it, but they had wisely refrained from discussing or attempting to define it. James I, on the other hand, took what seems to us an almost childish delight in lecturing Parliament and Privy Council upon his particular theory of divine right, and also entered the realms of political philosophy by writing a book on the subject.

But James's theory gave to divine right an hereditary nature. According to him not only did monarchs rule by divine right, but they succeeded to the throne by the divine right of heredity. This, of course, put him beyond the reach of Parliamentary statutes regulating the succession. In this connexion it is interesting to note that he delayed calling his first Parliament until he had been on the throne nearly a year, and that in his speech at its opening he thanked Parliament for "declaring and receiving of me in this seat, which God, by my birthright and lineal descent, had, in the fullness of time, provided for me."

It was not to be expected that Parliament would be content meekly to accept the constitutional position to which these royal pretensions would have relegated it. Before the end of its first session the Commons had begun severely to "admonish" the King upon his lack of understanding of the Constitution, and to counter his assertions of divine right with assertions that the voice of the people

was the voice of God. Parliament maintained that the king was bound by law. James's position was that the king as "God's lieutenant upon earth" was above the law. "A good king will frame all his actions to be according to the law," he said. "Yet is he not bound thereto but of his good will, and for good example-giving to his subjects." It followed naturally that the privileges of the subject and of Parliament were not fundamental rights; they existed only by the royal grace. Finally, no one could question the acts of the king: just as it was blasphemy to dispute what God might do, so was it sedition for subjects to dispute what a king might do, James told his Parliament in 1610.

Probably if the King and Parliament could have seen eye to eye in matters of religious and foreign policy the struggle would not have been so acute. But whereas the Puritan majority in Parliament wanted the King to take up a more uncompromising attitude toward Catholics, to bring the Church more into conformity with Puritan ideas of doctrines and organization, and to continue the Elizabethan policy of war with Spain, James strove to steer his course in exactly the opposite direction. Parliament was, therefore, forced to challenge the King's right to pursue a policy opposed to its wishes. Had his policy been popular it is very improbable that his right to pursue it of his own accord would have been questioned. His methods were challenged chiefly because Parliament disliked the aims they had in view.

The real struggle began over the question of finance. James, coming from poverty-stricken Scotland, thought of England as a land flowing with milk and honey. He soon found that his income was insufficient to meet his expenditure. Only by grants of special subsidies from Parliament could the deficiency be met. But Parliamentary grants took the form of the antiquated fifteenths and tenths which in 1603 were worth less than a quarter of their value in the Middle Ages. In Elizabeth's reign the grant of one of these at a time had been found useless. So in 1601 we find that eight were levied. The method was a bad one; the incidence of taxation was unfair; the proceeds tended to diminish. On the other hand, James's extravagance considerably raised the cost of government. James, therefore, resorted to unparliamentary methods of taxation. His first Parliament, true to the custom of the time, granted him customs duties, familiarly known as tonnage and poundage, for life. The exact rates of the duties on the various articles were laid down in the statute making the grant to the King, but he claimed the right to increase them at will without previously consulting Parliament. These increases were known as '*impositions*.' In 1606 a test case cropped up when a merchant named Bate refused to pay an "imposition of five shillings per hundredweight upon imported currants." But the Court of Exchequer, before which the case was tried, decided in favour of the King. Precedent was on the King's side. Previous sovereigns had been allowed to raise or

lower customs duties by proclamation. But while his predecessors had done this for the regulation of trade James did it for the sake of increasing the royal revenue.

James, in fact, drew up a new Book of Rates, considerably increasing many of the customs duties. As English trade was growing rapidly at the time, customs duties were a very productive source of income to the Crown. Parliament, therefore, saw its greatest weapon, control over finance, slipping from its fingers. It began to protest. But it lifted up its voice in vain. James's second Parliament, which met in 1614, began by declaring that the King had no right to impose taxation of any kind except by permission of Parliament. James angrily dissolved it and for the next seven years ruled without a Parliament. In order to carry on the government he was forced to adopt further unparliamentary methods of taxation. In 1614 and 1620 he took benevolences. He also resorted to forced loans and the grant of monopolies, and created a new dignity, that of baronet, which he sold at the fixed rate of £1000 to each recipient.

In order to strengthen his position James used his power over the judges to get decisions in his favour in the courts. We have seen the effect of this in the case of Bate. The judges were of great constitutional importance in Stuart days. They interpreted all doubtful Acts of Parliament. Their decisions had force of law until overridden by an Act of Parliament. Now while James as king could

veto an Act of Parliament he also could appoint and dismiss all judges at will. It was possible, therefore, for him to force the judges to give decisions on constitutional points in his favour and prevent Parliament from reversing their decisions. Lord Chief Justice Coke in 1616 was dismissed for attempting to assert his independence as a judge. This was the first case of the Crown using its power to dismiss a judge; even the Tudors had not used it.

Another expedient employed by James was the use of royal proclamations to enforce his will in matters either not provided for in the law or directly contrary to the law. But in 1610 the Commons protested against this, and for once the judges, inspired by Coke, gave a decision against the King. Proclamations, they decided, were only constitutional when they enforced existing law. Technically the Commons had won a victory, but they had very little power to force the King to conform in practice to the decision of the judges.

At the end of James's reign the divergence between Crown and Parliament was becoming very marked indeed. Probably James would have continued to rule without a Parliament had not the Thirty Years War broken out in Germany. When his son-in-law, the Elector Palatine, was driven from his dominions, and James's Spanish negotiations failed ignominiously, James was forced in 1621 to summon Parliament and ask for a grant of money for purposes of war. Parliament replied by granting the King less than one-third of the sum demanded

and by attacking the abuse of monopolies. It revived the method of impeachment, using it against several holders of monopolies and against Lord Chancellor Bacon, who was condemned for taking bribes. The case of Bacon was important. Parliament was beginning to take up the question of the responsibility of ministers of the Crown for acts committed against the law of the land. Three years later Middlesex, the Lord Treasurer, was condemned by Parliament on a similar charge. Both Bacon and Middlesex were deprived of office as part of their punishment.

On one matter the Parliament of 1621 quarrelled bitterly with the King. It petitioned the King to take more stringent measures against the increase of Popery and to arrange a Protestant marriage for his eldest son. James indignantly replied in a message to the House of Commons "that none therein shall presume henceforth to meddle with anything concerning our government or deep matters of State." The House thereupon drew up its famous Protestation, in which it declared "that the liberties . . . of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England" (December 18, 1621). James in a huff prorogued Parliament, and a few days later tore out from the journal of the House of Commons the pages upon which the Protestation was written.

James's last Parliament met in 1624 a few months before his death. By this time there was no longer any danger of a Spanish marriage for Prince Charles.

James was making definite preparations to fight on behalf of the Calvinists in Germany. Relations, therefore, between King and Parliament were somewhat better, though this Parliament passed an Act declaring monopolies illegal except in the case of patents for new inventions. This temporary agreement between King and Parliament over the question of foreign policy was only a breathing-space in the struggle. None of the great outstanding principles had been settled: they had merely been postponed. James died in 1625, and the stage was set for the next act of the drama.

§ 25. **The Petition of Right.** Charles I, who succeeded his father in 1625, had a finer character and a more vigorous personality, but considerably less political sagacity, than "the wisest fool in Christendom." Trained by his father into a complete acceptance of the divine-right theories of kingship together with the organization and doctrines of the Anglican Church, he clung to them throughout life with that obstinate lack of compromise characteristic of a man of small intellect. He was incapable of seeing anybody else's point of view. We are not concerned here with his private character, which, in comparison with other rulers of his age, was exemplary. As a politician he fundamentally misunderstood the people he was called upon to govern. But he was not extravagant like his father. His financial difficulties, which were the occasion of so many of the constitutional struggles of his reign, were due to no fault of his administration.

James I inherited a large debt from Elizabeth. His son also found himself encumbered with a large debt, and inherited in addition a war with Spain, which he was eager to pursue. His first Parliament, however, showed itself unwilling to grant supplies adequate for the very pressing needs of government. The Commons offered the King tonnage and poundage for one year only—an entirely novel procedure—and proceeded to discuss "the abuses and grievances of the realm and State." They hinted strongly at Buckingham's maladministration as Lord High Admiral and advised the King to choose ministers who possessed their confidence. Charles indignantly dissolved Parliament before any money supplies whatever had been voted.

In the interval between the first and second Parliaments came news of two British disasters in the war with Spain—Mansfeld's expedition to recover the Palatinate and Cecil's naval attack upon Cadiz. Both were due almost entirely to corruption and mismanagement. The expeditions were equipped with lamentably insufficient and bad supplies. For this state of affairs Buckingham was responsible as head of the department concerned. When, therefore, Charles's second Parliament met in *1626*, summoned because the King was at his wit's end for lack of money, it refused to discuss matters of finance and proceeded to impeach Buckingham. In vain did Charles strive to defend his minister by reminding the Commons that all Buckingham's official acts were done at his command.

Parliament refused to accept such a defence, and the King was forced to dissolve Parliament in order to prevent the continuance of proceedings which would have ended only in the condemnation of his minister.

Still no money grant had been voted by Parliament. Charles had all along been collecting tonnage and poundage in anticipation of a Parliamentary grant. After the failure of his second Parliament he still continued to collect customs duties. He also demanded benevolences and forced loans. In 1627, when war was declared on France, writs were issued for the collection of a general loan assessed in exactly the same way as a Parliamentary subsidy. Even the judges of the King's Bench refused to sign a written statement that the loan was legal. Everywhere men refused to pay. The disobedient were either arrested and imprisoned by royal order or pressed into the army.

Five gentlemen imprisoned in this fashion applied for a writ of Habeas Corpus. This was the name of the royal order sent to the gaoler or governor of a prison bidding him produce prisoners under his charge for trial. Their case was brought before the Court of King's Bench, where the judges decided that in special cases it was perfectly legal for the Crown to arrest and imprison a man without cause shown, and hence without a trial. Precedent, indeed, was on the side of the King. The Tudors had often used this expedient of arbitrary imprisonment. The opponents of the King

appealed to Magna Carta; but it is only just to Charles to point out that the clause regarding arrest in Magna Carta had never previously been used to prevent the king from using his powers of arbitrary arrest *under special circumstances.*

The Five Knights' Case, as it was called, strongly inflamed public opinion against the King. But at the same time other questionable acts of the Government caused further discontent. Owing to serious lack of money the troops concentrating in the south of England for attack upon France were billeted upon private people, while in some places, owing to the disorderly nature of the soldiery, martial law was proclaimed. A proclamation of martial law in a district suspends the working of all the ordinary methods of justice there and substitutes for it courts martial, presided over by army officers, whose judgments are often arbitrary and more than ordinarily severe. It is a very serious proceeding. At the present time when the Government proclaims martial law it has to get a special Act of Indemnity passed through Parliament pardoning all illegal acts committed by those responsible for carrying its orders into effect. Martial law is thus not law at all. In Charles I's day Parliament had no such control over the Government in the matter of the proclamation of martial law, though it was an understood thing that the Government should only resort to snch an expedient under very special circumstances.

The matter was brought to an issue in 1628, when

financial necessity again forced the unwilling King to summon a Parliament. This Parliament—Charles's third—came together resolved to put some check upon the prerogative powers of the Crown. Four questions had definitely emerged to the surface of the seething pool of discontent—unparliamentary taxation, imprisonment by royal order without cause shown, the billeting of soldiers upon private individuals, and proclamations of martial law. Charles told the Commons plainly that he would never consent to an Act of Parliament limiting his powers in this respect. The Commons, therefore, drafted, and both Houses presented to the King, a Petition of Right. This was a method often employed by individuals in moving the king or his Council to make some judicial decision. When granted in the case of an individual it was like a case decided in the law-courts: it established a legal precedent. Parliament used this method in 1628 as the next best way to a statute for binding the King.

The Petition of Right made four demands of the King. In the first place, it asked "that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by Act of Parliament." Secondly, it asked that no one should be imprisoned illegally or without cause shown. It then proceeded to ask the King to remove all troops billeted upon private persons, to discontinue commissions of martial law, and promise to issue no fresh ones in

future. Charles at first gave a very guarded and ambiguous reply. Parliament, however, refused to accept it, and the King was compelled to give to the Petition the form of sanction usually given to a private petition: "*Soit droit fait comme est désiré*" ("Let right be done as is desired").

So the Petition of Right, unlike Magna Carta and the later Bill of Rights, did not become statute law. It was a general statement of constitutional principles which could be referred to as a precedent, but which had not the actual binding force of Parliament-made law. It was an attempt to set limits to the exercise of the king's prerogative; Parliament wanted to limit the sovereignty of the king. But a limited sovereignty is no sovereignty. Who, therefore, was to be the ultimate sovereign in the British Constitution? That was the fundamental question at issue in the seventeenth century.

§ 26. *Tyranny and Revolution.* Almost immediately after the royal acceptance of the Petition of Right another quarrel broke out between King and Parliament. It arose over the interpretation of the financial clause in the Petition. Charles had since the beginning of the reign caused the regular collection of tonnage and poundage, although Parliament had never authorized him so to do. Parliament at the end of the 1628 session prepared to condemn the action of the King as being contrary to the Petition. Charles, however, maintained that as tonnage and poundage had not been specifically mentioned in the Petition no limitation of his powers

in this respect had been intended by Parliament. The contest over tonnage and poundage was embittered by a religious quarrel which developed at the same time. Charles's chief adviser in matters of religion was William Laud, an Oxford divine of extremely High Church tenets, whom he had created Bishop of London in 1628, and who became Archbishop of Canterbury in 1633. Laud aimed at crushing out from the Anglican Church whatever influences of the teachings of Calvin had crept into it. His methods aroused sharp antagonism in the breasts of the Puritan majority in Parliament, which appointed a sub-committee to draw up resolutions protesting against "the great danger threatened to this Church and State, by divers courses and practices tending to the change and innovation of religion." As the quarrel proceeded the King tried to prevent the Commons from discussing disagreeable points by ordering the Speaker to adjourn the House. On the second occasion of this sort the House refused to accept the ruling of the Speaker, who was forcibly held down in his chair while three resolutions drawn up by Sir John Eliot were carried. This dramatic scene has been regarded by historians as the first step toward revolution. The resolutions declared that anyone introducing innovations in religion, anyone advising the collection of tonnage and poundage without Parliamentary consent, and anyone paying tonnage and poundage was a traitor. Charles decided that henceforth he would rule without Parliament. Nine of the members responsible for the

riot in the House of Commons were arrested, heavily fined, and imprisoned. At the earliest possible moment Charles dissolved Parliament, and shortly afterward published a Declaration justifying his actions and asserting the independence of himself and his ministers of Parliament in carrying out the administration of the realm (1629).

The period in English history from 1629 to 1640 is generally known as the "Eleven Years Tyranny." The exact meaning of the word 'tyranny' in this respect must be clearly understood. Charles broke very few established laws; in fact it is possible to argue that he broke none. Wherever the Constitution was vague he strained it or interpreted merely the letter of the law in his own interest. He did not personally oppress his subjects, though in the cases of a few individuals like Prynne and Bastwick the punishments inflicted by prerogative courts such as the Star Chamber and the Court of High Commission were unduly harsh. The general life of the community was not interfered with; trade and prosperity increased; justice was steadily administered.

But government was carried on solely through the Privy Council, which controlled the royal officials and the justices of the peace and decided both matters of policy and administration. In matters of policy it was the King's practice to consult only a small inner ring of confidential advisers, the chief of whom were Laud and Wentworth, Earl of Strafford. The Privy Council sitting in the Star

Chamber practically controlled all the justice of the kingdom. Its jurisdiction was greatly increased during these years. It and its sister court, the Court of High Commission, which regulated religious matters, were the chief instruments of Charles's 'tyranny.' Their unpopularity was increased by the fact that they proceeded without a jury and often had recourse to torture in order to extract information. Their efficiency also did not increase their popularity. The other two Tudor courts, the Council of the North and the Council of Wales, carried out similar work in their respective districts.

The success or failure of Charles's experiment depended primarily upon finance. If the King could get sufficient revenue to carry on government he could dispense with Parliament for an indefinite period. His financial expedients, therefore, are of great interest. In the first place, he continued throughout this period to levy tonnage and poundage. On account of the great increase of trade the receipts from customs duties increased proportionately and were a fruitful source of revenue. But even with the most scrupulous care and economy Charles could not accommodate his needs to his means. He was forced to search for additional sources of income. By searching among the old laws and customs of the realm his Attorney-General, Noy, was able to discover practices not definitely forbidden by Parliament and capable of adaptation to the royal needs. A few of these may be mentioned.

Compulsory knighthood—'distraint of knighthood'—invented in the reign of Henry III to keep up the numbers of the fendal array, was reintroduced. All men with incomes of £40 a year from land were required to become knights. A temporary revenue thus accrued to the King from the patent fees paid by the new knights and the fines for exemption paid by those unwilling to assume the degree. Again, the ancient forest rights of the Crown were revived, though for centuries they had been disregarded. The old boundaries of the royal forests were demarcated, and all holders of land within them who could not satisfactorily prove their rights were heavily fined. This caused great resentment, as much encroachment (or, as it is often called, 'squatting') upon royal forest-land had occurred.

Probably the most important of these revivals of past practices, and certainly the most unpopular, was what was commonly known as 'ship money.' The collection of money and ships from the maritime parts of England in times of national danger or to put down that terrible scourge of the times, piracy, had been organized as early as the reign of Ethelred the Unready, when it was known as Danegeld. It had been occasionally levied by Elizabeth. In 1634, on account of the somewhat threatening development of the Dutch naval power, there was real need for a strong British navy to police the main routes of commerce taken by British vessels. Charles, therefore, issued his first writ for the collection of ships or ship money from the port towns. In this

way a fleet was equipped, which put to sea and did good work.

In the following year (1635) a second writ applied the tax to the whole of England, and the judges on being consulted declared that the King was within his rights in so doing. In 1636 a third writ was issued, similar to the second. It was calculated to bring in the sum of £200,000—a sum sufficient, indeed, together with the other items of royal revenue, to free the King from all financial worries so long as nothing unforeseen occurred. It was to this third levy that John Hampden objected, and created a test case by refusing to pay his contribution of twenty shillings. His case was tried by twelve judges in the Court of Exchequer and was lost by five votes to seven. The judges who voted against Hampden did so on the ground that no Act of Parliament could in any way prevent the King from taking measures necessary for the defence of the realm. So the King went on collecting the tax until the end of the 'tyranny.'

Had Charles pursued a sane religious policy his period of absolute rule might have continued for a much longer time. His attempt, however, to force bishops and the Anglican Prayer-book upon the Presbyterian Church of Scotland caused Scottish national sentiment to flare up, and in the disasters of the two Bishops' Wars Charles's precarious financial position tottered to complete ruin, and he was forced once more to summon Parliament. The Short Parliament, summoned in 1640 in the in-

terval between the two Scottish wars, refused to listen to the King's financial proposals until grievances were redressed. It was, therefore, speedily dissolved. But in November of that year the twice-defeated monarch was forced to summon another Parliament, the famous Long Parliament.

When the Long Parliament met in the autumn of 1640 its position was more unassailable than at any other point in the history of the institution. A bankrupt and defeated king, a discredited administration, could offer no resistance to the demands of a unanimous Parliament strongly backed up by the whole weight of public opinion in the country. Parliament knew its power, but it was taking no risks. It set itself systematically to destroy all the means whereby Charles I had been able to govern without Parliament. A Triennial Act was passed requiring that Parliament must be summoned not less than once in every three years. Another Act which the unwilling King had no option but to sign was to the effect that the Long Parliament was not to be dissolved without its own consent. Other Acts declared tonnage and poundage, ship money, and all other financial expedients to be illegal save by the consent of Parliament. Henceforth it is illegal for any taxes to be imposed without consent of Parliament. The prerogative courts, too, were one and all swept away—the Star Chamber, the Council of the North, the Council of Wales, and the Court of High Commission. In future the common law and the ordinary courts of

justice were to maintain their supremacy without interference from the Privy Council.

The question of the responsibility of the King's ministers was tackled by the Long Parliament when Laud and Strafford were impeached of treason. Treason in the strict sense could not be proved against them, since at law treason could only be committed against the king. In Strafford's case his accuser Pym therefore accused him of "endeavouring to subvert the ancient and fundamental laws and government of His Majesty's realms of England and Ireland and to introduce an arbitrary and tyrannical government against law in the said kingdom." The Lords, however, would not accept the impeachment, so the Commons passed a Bill of Attainder, which both Lords and King accepted only because of the threatening attitude of the London mob, which could not be restrained. Revolution was indeed beginning. Laud's impeachment was carried through successfully, as also was that of the judges who voted against Hampden in the ship-money case. The fact that their acts had received the sanction of the King in no way served as a defence to the accused ministers. A new idea, in fact, was growing up, which was later to become a fundamental rule of the Constitution, viz., that no servant of the Crown can plead the assent or order of the King in defence of any of his acts.

All the above measures were the work of the first session of the Long Parliament and were passed almost unanimously. But there were distinctly

two religious parties in Parliament, one in favour of changing the constitution of the Church by the abolition of bishops, and the other anxious to maintain the Elizabethan settlement. This gave the King his chance. When the second session of Parliament began in October 1641 the Grand Remonstrance, a recital of the wrongdoings of the King and statement of the Puritan party's ideas on Church reform, was only passed by eleven votes. The King now had a party. Had he possessed sufficient political insight to pursue a moderate policy he could have prevented the further spread of revolutionary tendencies. But his foolish attempt to arrest five members of the Commons for treasonable correspondence with the Scots during the recent wars inflamed the passions of the opposition to boiling-point. At that moment the Irish Rebellion broke out. Parliament, fearful lest the King might recover his power and undo all its work if allowed to mobilize an army, went to the extreme length of passing a Militia Bill, transferring control over the military forces from the King to Parliament. When Charles refused royal assent to the Bill, Parliament asserted its right to make 'ordinances' having the force of law without royal assent. This revolutionary assertion, coupled with the no less unconstitutional demand regarding the army, was the last straw. Both sides immediately prepared for the now inevitable civil war.

In the Great Civil War (1642–48) the King was defeated. But Parliament was not victorious. The

Army, a new factor organized by Cromwell, in alliance with the Scots, decided the contest. The Army was composed of the extreme Protestant party known then as Independents. They were opposed to a national organized Church and believed in the liberty of the individual congregation to organize independently of all others. The Presbyterians in Parliament and the Scots would have reinstated Charles upon the throne with carefully limited powers. The Army, however, by the proceeding known as "Pride's Purge" (1648), expelled the Presbyterians from Parliament along with all who opposed the idea of trying the King. The small remnant of the Commons, terrorized by the Army, constituted themselves a court, before which the King was tried for treason against the nation. These proceedings were more unconstitutional than anything ever committed by the King, who naturally refused to plead before such a court. He was thereupon condemned and executed (January 1649).

§ 27. **The Cromwellian Régime.** It is possibly needless to point out that the execution of Charles I was both unconstitutional and unnecessary. It found favour with only a small minority of the nation. The most significant fact about it was that it was the work of the Army. England had passed under a military despotism. Parliament, however, made a ludicrous pretence at dominating the situation. Shortly before the execution of the King the Rump resolved "that the people are, under God, the original of all just power; that the Commons

of England in Parliament assembled, being chosen by, and representing, the people, have the supreme power in this nation." Nevertheless, the leaders of the Rump dared not risk a general election. They co-opted about a hundred new members, abolished the House of Lords and the kingly office, and declared England to be a commonwealth. The administration was placed in the hands of a Council of State, which placed the various departments of State under specially appointed committees. Thus we have the Committee for the Navy, the Committee for Trade, and so on.

But in reality the government was in the hands of Oliver Cromwell and the Army. The Army wanted the establishment of a definite constitution. The Rump wanted to maintain its own irresponsible power. After the Irish and Scottish rebellions had been quelled a deadlock occurred between the Army and the Rump, which resulted in Cromwell taking matters into his own hands and expelling the Rump by force (April 1653). A nominated body, the "Barebones Parliament," was then set up by Cromwell and given the task of making a constitution. But it proved itself far too visionary for any real practical work. Cromwell, therefore, fell back upon a scheme propounded by General Lambert and a committee of Army officers. It was known as the Instrument of Government, an attempt to formulate a written rigid constitution for Great Britain and Ireland. By it the executive government was to be in the hands of a single head, the Lord Protector, assisted by a

Council of State, very much like the Privy Council of Tudor and early Stuart times. Legislation and taxation were to be entrusted to an elected single-chamber Parliament, which was to meet not less than once in three years and sit for not less than five months.

The Instrument of Government had no permanent influence upon the history of the British Constitution, but it is of great interest for several reasons. In the first place, it shows the beginnings of the reaction which culminated in the Restoration of 1660. The Rump had abolished the office of king. The Instrument recreated it in the shape of the Lord Protector. But the Instrument was also an Act of Union and a Reform Bill. It provided for the representation of Ireland and Scotland in the imperial Parliament, each country sending thirty representatives. It altered the whole basis of franchise in the counties by substituting the possession of property worth £200 for the forty-shilling freehold qualification. It also disfranchised many of the smaller boroughs, giving greater representation to the counties and enfranchising such towns as Leeds and Manchester. But Royalists were temporarily, and Roman Catholics permanently, disfranchised. The Protector, as head of the administration, was to have a fixed revenue, but his veto in legislation was to be only a temporary one. Parliament, however, might not pass laws which in any way conflicted with the fundamental law of the Constitution.

As a solution of the constitutional problem the Instrument was a failure. The elected representatives were anxious to remodel the Constitution, and Cromwell took the earliest opportunity of dissolving Parliament. He then divided England up into ten districts, each presided over by a major-general supported by a large force of soldiers and with almost absolute powers of administration subject only to the Protector and the Council of State. When the second Parliament, elected under the provisions of the Instrument of Government, met in 1656 it contained a very powerful opposition. One hundred of its members were, therefore, arbitrarily excluded by Cromwell; the rest, after criticizing the rule of the major-generals, drew up further proposals for constitutional changes called the Humble Petition and Advice. These with certain modifications were accepted by Cromwell.

The Humble Petition and Advice marks a further stage in the reaction toward the old Constitution. Cromwell refused the proffered invitation to become king, but accepted greater dignity and powers. His office, in fact, differed not at all from that of Charles I except in name. He was the head of a practically irresponsible executive. The shadow of the old House of Lords was revived in a nominated second chamber of life members known as 'the other House.'

So, gradually, in one shape or another the forms of the old Constitution were brought back. How much farther the reaction would have gone had Cromwell

lived longer it is impossible to say. The greatest weakness of his administration, like that of Charles I, was in the matter of finance. The expenses of the new Government with its ambitious foreign policy were enormously greater than those of any previous administration. Public finances were mismanaged, officials were notoriously corrupt, the army and the navy were owed arrears of pay to the extent of over £2,000,000. Government contractors refused to deliver goods because they could get no payment, yet taxation was heavier than it had ever been before.

The death of Cromwell in 1658 brought matters rapidly to a crisis. A fresh quarrel broke out between the Army and Parliament over the question of arrears of pay. The Rump was recalled, but again showed itself totally incapable of controlling the situation. Finally a section of the Army under George Monck took possession of London, and forced the Rump formally to dissolve itself and issue writs for a new election according to the old Constitution. The "Convention Parliament," which assembled as a result of the election, declared that the Government of England "is, and ought to be, by King, Lords, and Commons." A formal invitation was sent to Charles, the eldest son of Charles I, who was in Holland awaiting what he knew to be an inevitable development, and in May 1660 the experiments in republican government came to an end. The republic had been created by the Army; it was also ended by the Army. But the determining factor, as in the reign of Charles I, had really been financial collapse.

What was the importance of the Cromwellian *régime* to the constitutional history of Great Britain? The attempt to break with the past was obviously a failure; the old constitutional forms were restored in 1660. But the spirit of the Constitution had changed considerably. The cause of absolute monarchy was definitely doomed, though the struggle was not yet terminated. The Commons had won a position of predominance in the Constitution which they were unwilling to give up to the restored Stuarts. Never again, for instance, was the Crown to be allowed to be financially independent of Parliament. But the Commonwealth period settled no great questions; they had all to be fought out once more in the succeeding years. The great vexed question of sovereignty, especially, was still unsolved in 1660. But the issue was clearer. There emerged a sovereign legislature and a sovereign executive, both uncontrolled. Until the gulf between them was bridged, or one subordinated to the other, the contest between them was bound to continue.

§ 28. The Restoration. The Restoration was much more than a restoration of monarchy and the Stuart dynasty. In the first place, it was a restoration of Parliament. It gave to Parliament its old form and organization, which had been so radically changed during the Commonwealth period. The county franchise was once more the forty-shilling freehold; the newly enfranchised towns lost their representatives; the Parliamentary union between

England, Scotland, and Ireland, effected by the Instrument of Government, was dissolved. In the case of Scotland it was not to be revived until 1707, in the case of Ireland under tragic circumstances in 1800. Many of the boroughs that regained their members were decaying and unworthy of individual representation; some were, or soon became, the personal property of the Crown or of a great landowner. These 'rotten' and 'pocket' boroughs, as they were respectively called, made possible the development of organized Parliamentary corruption, by which the Crown vied with the landowning magnates in securing a majority in the House of Commons. This is a new and significant feature of English constitutional history.

But the restored Parliament was in a much stronger position than in the days of Charles I. While nearly all the legislation of the period from the beginning of the second session of the Long Parliament to the Restoration was declared null and void by the Convention Parliament in 1660, all the Acts of the first session were confirmed. The result was to make the "King in Parliament"—but only *in Parliament*—the legislative and financial sovereign in the Constitution. The Restoration did not, and could not, put back the hands of the clock.

Along with monarchy and Parliament the Restoration restored the landed gentry and the Anglican Church. The first Parliament summoned after the Restoration has been well called the Cavalier Parliament. It was more Royalist than the King

and more Anglican than the bishops, we are told. It was chiefly composed of the Royalist landed gentry, who had suffered total eclipse in the days of Cromwell. They carried the reaction in religious matters much farther than Charles II personally wished. Charles was anxious for toleration and for some sort of a compromise in religious matters, but the Cavaliers of the Restoration were bent upon a policy of hostility to all species of Nonconformity. The Independents were definitely outside the portals of the Anglican Church in 1660, but the Presbyterians and Baptists hoped for some scheme of 'comprehension' whereby they might still remain in the national Church.

The Clarendon Code, however, showed clearly the temper of the now dominant country gentry. It consisted of four Acts of Parliament passed between the years 1661 and 1665. The first was the Corporation Act, which provided that all persons holding offices in corporate towns were to take oaths declaring their allegiance to the King as supreme head of the Church and the illegality of resistance to the King, and were to partake of the sacrament of Holy Communion in accordance with the rites of the Anglican Church. This was followed by the Act of Uniformity, very similar to Elizabeth's Act of Uniformity. By it all clergymen and teachers were to declare their acceptance of the Anglican Prayer-book.

The Act of Uniformity caused a great movement of secession from the Church. The constitutional

importance of this was very great. The Anglican Church from being a really national Church became merely the Church of a party. It lost its high position in the State, tending to become more and more dependent upon the State. The old practice of the Church voting its taxes in Convocation came to an end; henceforth the clergy were taxed by Parliament in exactly the same way as the laity. Not until the middle of the nineteenth century did the Church begin to revive its power and influence in the life of the nation generally.

The Nonconformists began to set up churches of their own as a result of the Act of Uniformity. These, however, were declared illegal by the Conventicle Act, while the Five Mile Act, which completed the series, banished all Nonconforming clergy beyond the five-mile limit of any corporate town or any parish in which they had previously ministered. The chief sufferers from the Clarendon Code were the Presbyterians, who up to this time had been very powerful indeed in the towns. Many of them conformed outwardly to the Anglican Church, and as the reign proceeded began to form the core of the party of opposition to the Crown known later under the name of the Whigs.

But the royalism of the restored country gentry was sentimental rather than practical; their loyalty to the Church and their own order was greater than their loyalty to Stuart kingship. Parliament at the outset of the reign abolished the old feudal dues paid by tenants-in-chief to the King and substituted for

them an excise duty upon beer. It voted the King a revenue for life, but made no provision whatever for the payment of the enormous debt left by the Commonwealth Government. Then, too, the sources of supply voted by Parliament for the new King and estimated to bring in an annual revenue of £1,200,000 fell annually short of the estimated amount by a surprisingly large sum. Dr W. A. Shaw, who calendared the Treasury Papers of the reign, writing of the early years of the Restoration period, says: "Of the ordinary fixed revenue of the country which had been estimated as sufficient to keep the governmental machine in motion, not one-half ever came in." When this situation was pointed out to Parliament by the King extra grants were made, which, however, were still unsatisfactory. Not until the last few years of the reign did Charles II's Parliamentary revenue reach the amount estimated at the beginning of the reign. The accumulation of royal debt became so great that in 1670 the King was forced to sell the whole of the Crown property—a proceeding which paid off about half of the outstanding debt—and to order the notorious "Stop of the Exchequer" in December 1671, whereby the snm of £1,300,000 which had been borrowed from the London bankers was held up indefinitely by the Government and an annual interest of 6 per cent. paid on it. This act of Charles II's administration has been severely criticized by historians from Hallam and Macaulay onward. Before offering any criticism it is perhaps

best for us to understand what the "Stop of the Exchequer" *really was.*

The royal revenue came in very slowly. At the end of a financial year usually only about one-third of the revenue had been paid into the Treasury. The usual practice, therefore, was for the Treasury to borrow from the bankers to the extent of the expected revenue. Revenue would then be assigned to the creditors of the Government plus 10 per cent. interest, and as the taxes for the financial year came in so the loans were paid off. What Charles did was to hold up the principal and pay only the interest at a reduced rate. But he did not repudiate his debts as previous kings such as Henry VIII and Charles I had done. The money remained a floating debt upon which interest was paid regularly, until in the reign of William and Mary it was funded as the National Debt, and its administration was taken over by the Bank of England. Modern research tends to the view that the alleged effects of the stoppage in causing wholesale bankruptcy and financial dislocation in London have been greatly exaggerated by writers who have not sufficiently explored the evidence.

Charles complained to Parliament on many occasions about his financial difficulties, but the Parliament that was "more Royalist than the King" was not going to allow even the popular Merry Monarch to be financially independent. The King's financial straits gave Parliament repeated occasions for exercising its control over money by ordering

audits of the royal accounts. Parliament also at this time began the practice of 'appropriation.' When in 1665 a special grant of money was made toward the expenses of the Dutch war a clause was included in the Bill making the grant to the effect that it was to be used only for the purposes of war. This established a precedent which was followed on the occasion of nearly every Parliamentary grant of money during the rest of the reign. Parliament had begun to see that in order to have full financial control it must not only control the imposition of taxes, but also the expenditure of the revenue derived from them. One of the charges brought up against Danby at his impeachment in 1678 was that he had disobeyed an appropriation clause in a money Bill. At the present day the appropriation of revenue is one of the most important functions of the House of Commons: every penny of revenue is annually allocated by Parliament to specific purposes.

The Restoration period, therefore, developed the power and influence of the country gentry and Parliament at the expense of the Crown. One effect upon Charles II of Parliament's attitude over finance was to drive him into the arms of Louis XIV of France. Charles II was a man of great political capacity; he was easily the best statesman of his house. He cleverly masked his real Machiavellian self under the pose of being merely an immoral philanderer and pleasure-lover who "discovered a new mode of walking called sauntering." In one

sense he did not pose: he certainly was immoral and an inveterate pleasure-seeker. But his real business in life was to build up a strong administration independent of Parliament. His reign witnessed a development of naval administration altogether more efficient than at any previous period of English history. During his reign, too, the administrative machinery for the government of England's new colonial empire was constructed, and the imperial code of law—the Laws of Trade and Navigation—created. The administrative machinery was the work of the Privy Council. Its efficiency is unanimously acclaimed by all modern researchers who have dealt with the subject. Charles wanted to construct a thorough and efficient despotism modelled upon that of Louis XIV in France. Bit by bit Parliament came to realize that this clever, unscrupulous man was more dangerous to its supremacy than his father had ever been.

In Charles II's reign the Privy Council was once more the centre of the administrative system of England. But it was an exceedingly large body—so large that it rarely held full meetings. Usually the King consulted a little inner ring of ministers, by whose advice all decisions were made. These decisions were carried out officially in the name of the Privy Council and recorded in the "Acts of the Privy Council," though they were made by only a small fraction of its members. The nickname of 'Cabal' given to one of these inner rings of counsellors has become famous, because it was made up

of the initial letters of the names Clifford, Arlington, Buckingham, Ashley, and Lauderdale, the five ministers composing it. But the Cabal was not a ministry in the modern sense; its members were individually responsible to the King, who could consult any number of them he chose, or act entirely without their advice. Charles, in fact, kept several of the provisions of the Treaty of Dover (1670) entirely secret from the Cabal. After the fall of the Cabal in 1673 the King returned to his earlier practice of having one minister (Danby) to lead the administration and act as his chief adviser. But Danby was no 'Prime Minister' in our modern sense. Charles really directed policy, though Parliament insisted upon holding Danby responsible for it and finally drove him from office in 1679. Charles I had considerably weakened his position by assuming complete responsibility for the acts of his ministers. Charles II callously but wisely on every possible occasion shifted responsibility for the policy of the Government upon the shoulders of ministers, and slowly but surely won for himself toward the end of his reign a position stronger than his father or grandfather had ever held.

Charles II's reign was important as the period in which the two great political parties of the Whigs and Tories had their origin. The Whigs developed as the party which opposed the King's foreign and religious policy. They were first given definite organization by the Earl of Shaftesbury during the years 1673 to 1681. It came about in this way.

Charles's financial experiences during the first ten years of his reign were largely responsible for driving him to accept the golden offers of Louis XIV. The *Grand Monarque's* conditions, however, were that Charles in return for subsidies which would make him independent of Parliament must pursue a pro-French foreign policy and grant toleration to Catholics.

When Charles in 1672 by royal prerogative issued a Declaration of Indulgence suspending the operation of the Clarendon Code against Catholics and Dissenters, Parliament immediately smelt a rat. The Declaration practically repealed the Code—a proceeding which could only be done by Parliament. Charles's action, therefore, was unconstitutional. Parliament passed a resolution protesting against this use of royal prerogative, and Charles was wise enough to give way. But Parliament was not satisfied until it had secured the royal assent to the Test Act (1673), by which Catholics and Dissenters were excluded from all offices both civil and military under the Crown. Incidentally this Act broke up the Cabal, not one of the members of which was a loyal Anglican, and caused the resignation of James, Duke of York, from his office of Lord High Admiral.

Further secret negotiations with Louis XIV on Charles's part led up to the notorious Popish Plot scare and the fall of Danby in 1678. In order to prevent the impeachment of his minister Charles dissolved the Cavalier Parliament, which had been in existence since 1661. It was at this time that

the names Whig and Tory were first applied to the opponents and supporters respectively of the King's policy. The word Whig was derived from the name given to a certain set of fanatical Scottish Covenanters; the word Tory came from the name of a party of wild Irishmen who were particularly bostile to Protestantism.

A new Parliament was returned in 1679 with a Whig majority. Two of the measures introduced by it were of great constitutional importance. The first was tbe Habeas Corpus Act. This finally settled the long controversy over the question of the Crown's rights of arbitrary arrest. Any man imprisoned without a trial had the right to apply for a writ of *habeas corpus* directing the governor of his prison to produce him for trial. Any jndge obstructing the issue of the writ, or gaoler refusing to obey it, was to be very severely punished. The Habeas Corpus Act bas been called "the basis on which rests an Englishman's security for the enjoyment of his personal freedom." It was further strengthened in 1816. On certain occasions in English history during times of great crisis it has been suspended, but this has only been done and can only be done by a Parliamentary statute.

The other measnre introdnced by the Whigs was a Bill for excluding James, Duke of York, from the throne on the grounds of his being a Catholic. This caused a little struggle. Charles prevented the Bill from passing by dissolving Parliament. When the Whigs again brought it forward in the next Parlia-

ment, which met in the same year, the Lords rejected it. The Whigs, in fact, were unwise enough to bring forward the King's illegitimate son Monmouth as their candidate for the succession. This fact, and the violence of their opposition to the King, caused a strong Tory reaction in the country. After summoning another short-lived Parliament in 1681 Charles ruled for the rest of his reign without a Parliament, but supported by the Church and the Tories.

From 1681 until his death in 1685 Charles was supreme. The enormous increase of English trade during his reign caused a corresponding increase in the revenue derived from customs duties. This, coupled with his regular income from Louis XIV, made him financially independent of Parliament. He was able, therefore, to embark upon a proceeding far more unconstitutional in spirit than any of his father's acts. Information was laid before the Court of King's Bench that the corporations of London and other ancient boroughs had violated their charters. Under this pretext the charters of these boroughs were declared forfeited. This meant that all the members of their corporations lost their positions. As most of the corporations were ardently Whig in political principles, and as in most boroughs the Parliamentary franchise was practically limited to the members of the corporation alone, the motive of this step will be perfectly obvious. In the new charters that were granted in place of the forfeited ones the King in each case nominated the persons

who were to constitute the new corporations. It is significant that his nominees were all Tories and Anglicans.

Charles died while the attack upon the charters was proceeding. James II's first Parliament elected under the new conditions contained a Tory majority, and during its first session was extremely friendly toward the new King. His honesty and restraint during the recent constitutional crises had made him popular with the country. The Whigs were disorganized and discredited. Parliament granted him a large revenue for life. The cause of monarchy in England seemed to be stronger than ever.

But James, who possessed none of the qualities of the statesman, very soon owing to his blind folly threw away all the advantages won by his brother. After the failure of Monmouth's rebellion he decided in the teeth of great opposition to maintain a standing army. This, in spite of the Test Act, he began to officer with Roman Catholics. When Parliament protested it was prorogued and finally dissolved, and the King secured from the judges a verdict that by royal prerogative he might dispense with the laws to the extent of granting commissions in the army and navy to Catholics. On the strength of this he began to appoint Catholics to posts in the civil service, the University of Oxford, and even in the Anglican Church itself. When the London mob began to object a large force of troops was encamped on Hounslow Heath to overawe the city.

In 1687 James felt himself powerful enough to

issue a general Declaration of Indulgence abolishing all religious tests. In the next year a second Declaration was ordered to be read in all churches throughout the country. This evoked a petition from the Archbishop of Canterbury and six bishops, who begged the King not to force them to read what they considered to be illegal. For stating that they believed the King's Declaration of Indulgence to be illegal the bishops were accused of having uttered and published a seditious libel. Their trial caused intense public excitement, which rose to the highest pitch when they were acquitted, even the royal troops at Hounslow joining in the jubilations. At the same time the birth of a son and heir to James caused the leading Whigs and some Tories to send an invitation to the Protestant William of Orange, the husband of James's elder daughter Mary, inviting him to come to England and take the lead against James. James, who was speedily deserted by all his adherents, fled to France, leaving the situation in the hands of William and the leaders of the opposition.

CHAPTER IX

CONSTITUTIONAL DEVELOPMENT FROM THE "GLORIOUS REVOLUTION" TO THE DEATH OF GEORGE III

§ 29. The "Glorious Revolution" and its Results. When James II fled from England in December 1688 William of Orange immediately summoned an assembly composed of the peers, the aldermen of London, and as many members of the Parliaments of Charles II's reign as conld speedily be got together. This body had, of course, no constitntional standing whatever; it could only advise William as to how to deal with the situation. By its advice he summoned a Convention Parliament, which proceeded to arrange a settlement. This, however, was not easy. The Whigs wonld have liked to have declared James deposed. Bnt the Tories and the leaders of the Church, who had accepted the principles of divine rigbt and non-resistance, found themselves unable to concur with tbis. The matter was finally settled by a fiction which was agreed to by both parties. By this it was asserted that James by his flight bad abdicated the throne and that his infant son James Edward was not his son at all, but had been smuggled into the palace. The throne was, therefore, declared to be vacant.

The Convention tben drew up a list of the un-

constitutional acts of James II and pronounced them illegal. After some hesitation the crown was offered to William and Mary jointly, on condition that they accepted the Declaration of Rights, as the document proscribing James II's arbitrary acts was called. On William and Mary's joint acceptance of the crown upon those conditions the Convention declared itself to be a true Parliament and proceeded to pass a number of important constitutional Acts, the chief of which was the Bill of Rights, the embodiment in statutory form of the Declaration of Rights. It is interesting to note that the first Parliament regularly summoned by the new King and Queen began its career by passing a statute confirming all the work of the Convention.

The events we have just briefly narrated are known as the "Glorious Revolution." The name was coined by the Whigs, who regarded the setting up of the new order of things as a personal triumph to themselves. Into its glory we shall inquire later. That it was a revolution no one can deny. Although the utmost possible display of legality was made the real fact remained that one king had been dethroned by his people and another elected in his place. As there existed in 1688 no constitutional method by which this could be done the *fact* of its being a revolution cannot be disputed.

The Bill of Rights, the great constitutional document which emerged as a result of the Revolution, summed up the results of the struggle which had raged throughout the century between the

Stuarts and Parliament. Its principal clauses were as follows:

1. That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without consent of Parlyament is Illegall.

2. That the pretended Power of Dispensing with Laws or the Execution of Laws by Regall Authority as it hath beene assumed and exercised of late is Illegall.

3. That the Commission for erecting the late Court of Commissioners for Ecclesiastical Causes and all other Commissions and Courts of like Nature are Illegall and Pernicious.

4. That levying Money for or to the use of the Crowne by Pretence of Prerogative without Consent of Parliament for longer Time or other Manner than the same is or shall be granted is Illegall.

5. That it is the Right of the Subjects to Petition the King, and all Commitments and Prosecutions for such Petitioning are Illegall.

6. That the raising or keeping a Standing Army within the Kingdome in time of Peace unless it be with Consent of Parlyament is against Law. . . .

7. That Election of Members of Parlyament ought to be free.

8. That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.

9. That excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted. . . .

10. And that for Redresse of all Grievances and for the amending strengthening and preserving of the Lawes Parlyaments ought to be held frequently.

It further confirmed the settlement of the crown upon William and Mary "dureing their Lives and

the Life of the Survivor of them." After their death the crown was to go to the heirs of Mary. In default of them the succession was to pass to the Princess Anne and her heirs, and failing them to William's heirs by a second marriage. But one important provision was added: "that all and every person and persons that is, are or shall be reconciled to or shall hold the Communion with the See or Church of Rome or shall profess the Popish Religion or shall marry a Papist shall be excluded and be forever uncapable to inherit possesse or enjoy the Crowne and Government of this Realme and Ireland and the Dominions thereunto belonging or any part of the same."

The Bill of Rights has been called a "singularly negative" document. It does not set up any form of government. It does not assert the principle of responsible government, *i.e.*, that the executive ministers of the Crown are responsible to the elected legislature for any or all of their acts. It limits the exercise of sovereignty by the king, but it does not state exactly where final sovereignty resides. On the other hand, the Bill of Rights made it inevitable that Parliament should be the predominant partner in the Constitution: practically everything declared illegal by the Bill has the clause "save by the consent of Parlyament" tacked on to it. The inference is that the consent of Parliament can make everything legal. Under such conditions monarchy can no longer be supreme.

But the Bill of Rights left the king still the head of

the executive. He was, indeed, shorn of his divine hereditary right; henceforth he was to hold his crown by Parliamentary sanction only. No guarantees, however, were put into the Bill to provide against its infringement by the king should he become personally powerful enough so to do. The real constitutional guarantees were developed subsequently. In the first instance, Parliament developed in the reign of William and Mary such a control over finance as it had never before had. It granted William a specified revenue, all of which it 'appropriated' to definite purposes—half to the civil administration, half to the army and navy. But England was at war and needed large sums for the upkeep of her armed forces. These were voted by Parliament for only one year at a time, and William was thus forced to summon Parliament every year. So began the practice of annual Budgets, which is the greatest guarantee that Parliament will be summoned every year.

In 1689, as has been pointed out, England was at war. This meant that the standing army created by James II had to be kept up, and rules for its discipline enacted by Parliament. A Mutiny Act was therefore passed which, on account of the prevailing dislike of a standing army, was to be in force for six months only. But the long continuance of the war, and at its close the necessity of maintaining a small standing army, compelled Parliament to renew the Act. It adopted the practice, which still holds, of renewing it for periods of one year only. The

Mutiny Act thus became an annual Act. When in 1881 its place was taken by the Army Act, this also was made an annual Act. The Mutiny Act, therefore, like the Budget, became a constitutional guarantee that the king would summon Parliament every year. If he failed to do so, military discipline in the army would completely lapse. From 1688 until the present day not a single year has elapsed without a session of Parliament.

Now that the supremacy of Parliament had been assured, and there was no danger of a king ruling without Parliament, it became necessary to limit the life of the House of Commons lest it should tend to make its power as irresponsible as possible. With this object a Triennial Act was passed in 1694, which provided that a general election must take place every three years. This must be carefully distinguished from the Triennial Act passed by the Long Parliament in 1641 under very different circumstances. The danger in 1641 was lest the King should again be tempted to rule without Parliament. The danger in 1694 was lest an irresponsible House of Commons should attempt to prolong its own life indefinitely after it had completely lost touch with the opinions of the electorate. The history of the Long Parliament was a serious object-lesson in this sort of practice.

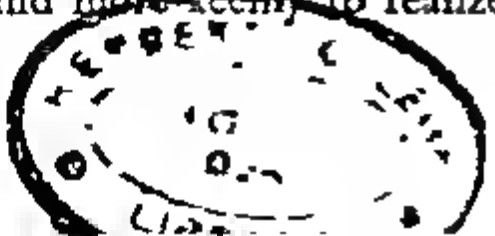
Two other great constitutional results flowed directly from the "Glorious Revolution"—the establishment of limited religious toleration and of the freedom of the Press. The former was brought

about by the Toleration Act of 1689, by which all Protestants other than Unitarians were granted freedom of public worship. Catholics still received no official toleration. The Act also granted only bare toleration to Dissenters; the Test and Corporation Acts still prevented them from accepting any public office. The liberation of the Press was brought about by no legislation at all. In Stuart times the censorship of the Press had been enforced by temporary statutes known as Licensing Acts. One of these had been passed in 1685. As its operation was limited to a period of seven years it lapsed in 1692. In that year Parliament revived it for one year only. After it lapsed in 1693 it was never again revived. From that time onward the laws of libel and the taxation of newspapers have been the only restraints upon the full liberty of the Press. The importance of this in the political education of England is great. The development of responsible government can only take place side by side with the development of a politically educated electorate. A free Press is not an unmixed blessing, but it is a prime necessity in the political education of an electorate.

By the year 1701 an important succession problem had arisen. It was then practically certain that neither William nor Anne would leave behind them any children to inherit the crown. So Parliament had again to draw up rules of succession. This time they were embodied in a statute known as the Act of Settlement, which vested the crown upon the

Then, too, there were in the gift of the Crown large numbers of places and pensions which could be used as an indirect method of bribing members of Parliament to vote in support of the policy of the Crown. This was all the more possible because Parliamentary debates were not published in those days, nor were division lists, so that constituencies could have no direct knowledge of the doings of their representatives.

In so far as the clause was aimed at preventing corruption it was good. But Parliament soon found that the exclusion of placemen from the House of Commons would mean the loss of its chances of controlling the Government, since the clause would have prevented the presence of ministers in the House. The clause was, therefore, modified by a Place Act, passed in 1707, which provided that if a member of the House of Commons accepted an office he must vacate his seat. Holders of offices created before October 25, 1705, were to be capable of re-election; holders of offices created after that date were to be incapable of re-election. This Place Act is still in force. It divided offices roughly into two sorts. On the one hand, it prevented the great majority of civil servants, judges, Government contractors, and so forth (but not army and naval officers) from sitting in the House of Commons. On the other hand, it enabled Secretaries of State and ministers of the Crown to seek re-election to Parliament. As time went on Parliament began more and more keenly to realize the importance of



holders of ministerial posts being members of one or other House of Parliament; it has therefore gradually become a custom that a minister of State must be a member of Parliament. If on seeking re-election he is unseated he must resign his office. But this is a convention or custom and not a law of the constitution. As a result of this development whenever Parliament has sanctioned the creation of a new ministerial post it has inserted into the Bill a saving clause that while acceptance of the post shall cause its holder to vacate his seat in the House of Commons he is eligible to seek re-election.

The "Glorious Revolution" and the legislation directly resulting from it were of lasting importance in English constitutional history. But their limitations were great. The principles enunciated could only be carried out properly in practice if the machinery of responsible government were constructed. The legislators of this period so far from constructing it very nearly prevented its future development. The two clauses in the Act of Settlement referring to the Privy Council and to placemen show that Parliament in 1701 had no conception whatever of responsible government, and it is even more significant that among all this legislation there was no law which required the king to appoint only ministers enjoying the confidence of Parliament. Nor was anything done to enforce the responsibility of Parliament to the electorate. The antiquated franchise rules which had come back with the Restoration remained throughout the eighteenth

century unaltered, a fact of great importance, as we shall see. But while no law created responsible government the Revolution Settlement was, indeed, indirectly the cause of its development, since, as we shall see in the next section, the situation created by the Revolution, combined with the control over finance won by the Commons, resulted in the development of what is known as the Cabinet system of government.

§ 31. **The Whig Dominance and the Beginning of Cabinet Government.** Although the Tories had been associated with the Whigs in bringing about the "Glorious Revolution," it was essentially a Whig triumph. The temporary alliance between the two parties in 1688 was soon dissolved. Party antagonism, based upon diametrically opposed views on several important national questions, became more and more bitter in the period between 1688 and the accession of the Hanoverian line in 1714. The Whigs were afraid of monarchy; most of the Tories continued to believe fervently in divine right. The Whigs favoured religious toleration; the Tories were narrowly Anglican and hated Dissenters. The Whigs feared Louis XIV as the champion of absolutism, the friend of the Stuarts, and the enemy of the "Glorious Revolution"; the Tories tended to be friendly toward France and were anxious for England to keep out of Continental politics. The Whig party was composed of the great noble families, the 'moneyed interest' in the towns, and the Dissenters; the Tory party recruited its strength

chiefly from the bulk of the country gentry—the squires—and the High Churchmen. William III was anxious to secure the support of both parties, but as the keynote of his policy was the destruction of the predominance of France in Europe he naturally was driven more and more into the arms of the Whig Party.

In the reign of Anne party warfare was exceptionally acute. In the House of Lords the Whigs had a slight majority, but in the House of Commons the parties were more evenly balanced, the scale usually inclining somewhat to the advantage of the Tories. Outside Parliament a wonderful battle of pamphlets raged between the most brilliant literary men of the age. On the Whig side were the journalists Addison and Steele, while the Tories enlisted giants such as Dean Swift, Daniel Defoe, and Lord Bolingbroke. In the days of Queen Anne the reading public received a political education of such a kind as no other period of English history can claim. The Whigs, however, were better organized than the Tories, and, what is more, they knew their own minds better. The Tories wavered between allegiance to the Act of Settlement—a Tory measure—and allegiance to the "king over the water."

From 1702 until 1710 the Government was composed chiefly of Whigs. Though the directors of England's policy, Marlborough and Godolphin, were Tories, they, like William III, threw themselves more and more upon the support of the Whigs in order to carry through the War of the Spanish Succession,

which the Tories stigmatized as a "Whig war." In 1710, however, Bolingbroke and Oxford secured a Tory triumph and for the rest of the reign directed the affairs of England. The "Whig war" was concluded by a "Tory peace." Intolerant measures were passed against the Dissenters. The Whig leaders were accused of corruption, and one of them, Sir Robert Walpole, was expelled from the House of Commons on charges that were completely disproved by the defence. Even Marlborough was forced to take refuge on the Continent for a short time. Meanwhile Bolingbroke began to prepare the way for a Stuart restoration on the death of Anne. The Whigs, aware of his designs, collected arms, enlisted troops, and prepared for civil war. The Tories wavered. The Pretender hesitated. In the midst of the confusion Anne suddenly died. The Whig leaders assumed control of the government, brought the Elector of Hanover across to England post-haste, and proclaimed him king as George I. The triumph of the Whigs was complete.

Before proceeding to discuss the constitutional results of the Whig victory in 1714 it is necessary to pay some attention to a great measure passed in the reign of Anne, the Act of Union between England and Scotland (1707). We have already seen that during the Cromwellian *régime* a Parliamentary union between the two countries had been brought about by the Instrument of Government (1653). "A wooden leg on a natural body" it had been called. At the Restoration the wooden leg

fell off; separate Parliaments were once more established in Westminster and Edinburgh. The idea of a Parliamentary union, however, was older than the Instrument of Government, since James I had first mooted it. Statesmen continued to advocate the scheme throughout the seventeenth century, but the apathy or actual hostility of the English Parliament prevented any permanent workable arrangement from being made.

A crisis arose in 1701 over the question of the succession to the throne: the Scottish Parliament did not adopt the English Act of Settlement passed in that year. It would have been possible for the Scots to have made different succession rules—a very dangerous thing in the then state of affairs in Great Britain and Europe. So the English Government decided that the only safe way to avoid the disastrous consequences of a deadlock was to try to bring about the long-despised Parliamentary union. Both Parliaments were persuaded in 1702 to empower Anne to appoint commissioners to make the necessary arrangements. But the work of the commission was not easy. A large section of Jacobites in Scotland wanted to reinstate the exiled Stuarts; the Presbyterians were alarmed for the safety of their religion, while the Scottish trading interest was bitter against the commercial restrictions enforced upon them by England. The negotiations fell through, and for a short time the two countries came almost to the brink of civil war. But the Scots' desire for equality in trade

with England predominated over their pugnacious promptings, and a settlement was reached in 1706. This, after passing through both Parliaments, took effect in 1707. On May 1 of that year the United Kingdom of Great Britain came into existence.

The terms of the Union were extremely generous to Scotland. She was to be represented in the British House of Lords by sixteen peers elected for each Parliament by the whole body of Scottish peers from among their number. She was to send forty-five members to the House of Commons. England took over the Scottish national debt, while in taxation the share of Scotland was to be only one-fortieth of the common revenue. The Scots' kirk and legal system were guaranteed their separate existence. Scotland also preserved her own educational system. In examining these terms it must be borne in mind that Scotland in 1707 was a very thinly populated, poverty-stricken country the Highlands of which were still barbarous and uncivilized. The Union was at first very unpopular indeed in Scotland; the national self-consciousness of the Scots was particularly keen. But when Scottish trade began to reap the benefits of equality with England the animosity against the Union soon died down: its material blessings proved infinitely greater than its possible spiritual losses.

The accession of George I assured the complete ascendancy of the Whigs. The new King, who knew no English and practically nothing about English politics, placed himself unreservedly in the hands

of the Whigs, who for the next half-century ruled England unchecked. The Whig Government during the period 1714 to 1760 has not inaptly been called a "Venetian oligarchy." It was almost entirely in the hands of a few great families, who were able to exercise a political influence of the most exceptional nature. In the first instance, on account of George I's inability to direct affairs the whole of what is known as the 'Crown patronage' was exercised by his ministers. Not only were there a large number of Crown boroughs—especially in the Duchy of Cornwall—which returned to Parliament a solid block of Crown nominees, but there were a vast number of sinecure offices in the gift of the Crown. Not less than 120 seats in the House of Commons could be filled in this way. During the reigns of George I and George II they were filled with stout supporters of the Whig party. In addition, the great Whig families owned or controlled a large number of pocket or rotten boroughs. For instance, the borough of Tavistock was owned by the Duke of Bedford, who was able to force its electors to return his nominees at every Parliamentary election. Even in the cases of boroughs that were neither pocket nor rotten an extraordinary amount of direct or indirect bribery could be, and was, employed. As the Whigs were by far the richer of the two parties, in a contest of bribery they could always win.

Outside the House of Commons also the Crown patronage was very valuable to the Whigs. Through it they appointed their supporters to all the higher

posts in the Church, to commissions in the army and navy, and to most of the high legal or judicial offices. All new peers, too, were Whigs. The possession of the Crown patronage, therefore, may be said to have been the basis of the power of the Whigs. In order to establish their influence and consolidate their power they used every possible art of corruption absolutely unblushingly. They assumed that every man had his price, and the prime concern of Whig statesmen was the dispensation of patronage. But it must not be thought that the Whigs lacked political ability or public spirit. They produced two statesmen of the very first order—Sir Robert Walpole and the elder Pitt. They also showed great respect for public opinion, and notwithstanding all the anomalies in the electoral system their Government was undoubtedly more truly representative of the country than any Tory Government could possibly have been.

The Whig period is not famous for its legislation. A few measures, however, must receive our attention. One of the earliest Whig measures was one to repeal the statutes passed against Dissenters by the Tories during the latter years of Anne's reign. But the Test and Corporation Acts of Charles II's reign still remained on the statute book. They would have liked to have repealed these, but were warned that any attempt to do so would be likely to stir up popular feeling against them. So the Acts remained nominally in force for another century, but the Government winked at evasions of them on the

part of the Dissenters. In fact, from 1727 onward Walpole and his successors secured an annual Act of Indemnity for all such evasions.

In 1716, after the confusion caused by the Jacobite rebellion of 1715, the Whigs secured the passage through Parliament of a Septennial Act lengthening the life of Parliament from a possible three to a possible seven years. Their immediate object was to put off a general election for some years, since they feared the return of a Tory House of Commons if a general election were to take place in 1716. Strictly speaking, every Act of Parliament is constitutional, since Parliament is the sovereign law-making body in the Constitution. But in a wider sense an Act of Parliament which runs counter to the spirit of the Constitution on some vital point may be said to be unconstitutional. Now the spirit of the Constitution embodies very definitely the idea of the responsibility of the House of Commons to the electorate. Any Act of Parliament lengthening its own life tends to infringe this idea, since the logic of it implies that Parliament could, if it chose, lengthen its life indefinitely. The Septennial Act, therefore, in this sense may be termed unconstitutional. But it remained the law of the land until it was repealed in 1911, when the life of Parliament was limited to five years. The Septennial Act reflects the characteristic attitude of the eighteenth-century Parliament toward the electorate. It did not regard itself as responsible to the electorate. The divine right of kings had given way before the

divine right of the House of Commons. We shall see further instances of this later in the century.

The unsuccessful attempt of the Whigs to pass a Peerage Bill in 1719 is mainly interesting because of its failure. The chief clause in this Bill was a proposal to limit the King's powers of creating new peers. The total number of peers was never to exceed the number existing in 1719 by more than six. This provision was designed to make it impossible in future for the independence of the House of Lords to be overridden by the creation of new peers. In 1713, in order to ensure the passage through the House of Lords of the ratification of the Tory Treaty of Utrecht, Anne on the advice of her Tory ministers had created sufficient new Tory peers to give their party a majority in the Upper House. The opposition of Walpole was responsible for the failure of the Bill. Since then no serious attempt has been made to limit the Crown's right to create new peers at will; and the right has been of great constitutional value in more recent years. In 1832 the Lords only finally passed the Reform Bill because William IV promised Earl Grey, the Prime Minister, that if necessary he would be willing to create as many as eighty new peers to ensure the passage of the measure. Since then on other occasions also the threat has been used with considerable effect.

The most important constitutional development of the period of Whig ascendancy was that of Cabinet government. During the seventeenth century the Tudor methods of government had gradually broken

down. The Privy Council had been the mainspring of the Tudor system. But in the days of the Stuarts it became, as we have seen, too large to execute its duties in an efficient manner. The Stuarts, too, preferred to act upon the advice not of a large body like the Privy Council, which numbered some fifty members, but of a few specially trusted ministers. They often met privately in the king's cabinet—*i.e.*, private room—whenever summoned by the king to discuss matters of State. But they had no definite meeting-place and no existence as a body. They were never recognized by law; their only legal standing was as members of the Privy Council or as heads of great administrative departments such as the Admiralty or the Treasury. Their meetings were entirely haphazard. It rested with the king to decide who should attend such meetings, and he was in no way bound to follow the advice tendered to him on such occasions. As members of the Privy Council they were bound by the oath of secrecy.

After the Restoration Charles II developed this method still further. His chief ministers for the time being usually formed a more or less permanent Cabinet Council, and one important part of their work was to influence the House of Commons as much as possible in order to secure a majority favourable to the King. James II pursued the same policy. But the Cabinet Council of the Stuart times had hardly anything in common with the modern Cabinet system, which originated in the reigns of George I and George II.

In the reign of William III, however, an important step forward was made. Although William was anxious to choose his ministers quite irrespectively of the particular party to which they belonged, he found it an unworkable expedient. From 1693 onward he found himself forced gradually to eliminate all Tories from his Cabinet on account of their hostility to his foreign policy. So the Cabinet began to assume the party aspect which later became a basic feature of modern Cabinet government. Through his ministers William, like Charles II, strove to secure the support of Parliament.

The same tendency showed itself in the reign of Anne. In order to carry on the war with France Anne found that she had to compose her Cabinets entirely of Whigs. But in 1710, when the Whigs were defeated at the general election, the Tory victory resulted in the complete replacement of the Whig ministry by a Tory one. In the same way the accession of George I resulted in the complete replacement of the Tory ministry by a Whig one. That was not because anyone had a theory about Cabinet government at that time: it was due to the pressure of circumstances. Ministries tended to belong more and more definitely to one party or the other according as one or the other dominated the House of Commons. But until the death of Anne the monarch usually presided at meetings of the Cabinet; Parliament had no control over the appointment and dismissal of ministers. True, it could use the weapon of impeachment, but it was

a clumsy method very difficult to use successfully. The monarch's will was still the deciding factor in all policy.

It was in the reigns of George I and George II that the most important developments of the modern Cabinet system occurred. George I's ignorance of the English language and of English politics caused him to absent himself from Cabinet meetings. This is a fact of supreme importance. From his day no king, not even George III, has ever attempted to be present, much less preside, at Cabinet meetings. This made possible the growth of the solidarity of the Cabinet. Its members no longer gave their advice individually, but tendered it as a body. While an able king could reject the advice of individuals and follow his own policy an ignorant king like George I, who cared not one straw for English politics, could not possibly reject the advice of his Cabinet as a whole, especially when his ministers controlled a secure majority in both Houses of Parliament.

The absence of the king from Cabinet meetings made possible also the growth of the office of Prime Minister, upon which the whole modern Cabinet system depends. In the absence of the monarch some one had to take the lead; this was usually assumed by the minister who possessed the greatest influence in Parliament. The first real Prime Minister of the modern type was Sir Robert Walpole, who gained the upper hand in the Cabinet in 1721 after the failure of the South Sea Company and

remained the head of the administration and the leader of the House of Commons until 1742. He may be said to have created the office of Premier. He realized that in the interests of efficiency and co-ordination it was necessary for the general policy of the administration to be directed by one controlling mind. He was not a philosopher or political theorist, but simply an ambitious, clear-thinking man, who regarded the problems of government from a purely practical point of view.

In the first place, Walpole insisted that he must have the power to choose his own colleagues. Having got his way in this, he systematically eliminated all his opponents from the high offices of State, filling their places with men willing to accept his leadership and support his policy. This gave rise to the modern practice of the Prime Minister being entrusted by the king with the formation of a ministry. Walpole therefore definitely created the modern type of ministry, which is regarded as being essentially a unity, offering its advice to the Crown with one voice and collectively responsible for the advice given. He did not absolutely establish the principle of collective responsibility—it was nearly wrecked by George III—but he did more than anyone else to develop the idea.

If the Cabinet was to speak to the king with one voice, that voice must be the voice of the Prime Minister. Such is, indeed, the modern function of the Prime Minister. If the king deals with individual heads of departments it must be upon purely

departmental business; he can discuss general policy only with the Prime Minister. This important constitutional principle was first put into practice by Walpole, but again he did not finally establish it. Only gradually toward the end of the eighteenth century did it become a definite maxim of Cabinet government.

Finally, Walpole established the Cabinet as a link between the Crown and Parliament. During his *régime* it became definitely the understood thing that the heads of the administration should be members of one or other of the Houses of Parliament. Walpole himself remained in the House of Commons during the period of his Premiership. He found that in order to maintain his power he must secure the support of that House. The idea gained ground, therefore, that either the Prime Minister or his representative must lead the House of Commons. The converse of this was that if the ministry lost the support of the Commons it must resign. This is exactly what happened in Walpole's case in 1742. He was not impeached; an adverse vote in the Commons secured his resignation, and an entirely new administration was formed.

The development of the modern Cabinet system, therefore, was purely a matter of practice. No law established either the Cabinet or the Prime Minister. The term Prime Minister, in fact, in Walpole's day was used as an opprobrious epithet to signify the unpopularity of Walpole's methods. It was a nickname which he scorned. Throughout the eighteenth

and nineteenth centuries both Cabinet and Prime Minister were unknown to English law: they are not mentioned in a single enactment. The Prime Minister, too, had no official status as such and no salary as such. He always held some specific departmental office, usually that of First Lord of the Treasury, practically a sinecure office with a salary of £5000 a year. This gave him the necessary freedom to busy himself with matters of general policy and the other manifold duties of the head of a Government who is also the leader of a party in Parliament. He could, of course, and sometimes did, hold other offices such as Foreign Secretary, Chancellor of the Exchequer, etc., but the point is that his official status and salary were those of the particular departmental post held by him. As Prime Minister he had neither.

So the modern Cabinet grew up as a committee of the Privy Council composed of heads of the great administrative or other departments of State under the leadership of the Prime Minister, tendering collective advice to the Crown, upon which it must act, and collectively responsible to the House of Commons. It was without official or legal recognition—a convention of the Constitution—depending for its existence and powers upon custom and procedure only; yet it has been the most important governmental development of modern times.

§ 31. **George III's Attack upon Cabinet Government.** George III, who succeeded his grandfather in 1760, was the first of his line who had been en-

tirely brought up in England. By descent he was German, but he considered himself English, and, unlike his predecessors, he regarded England and English affairs as of greater importance than the petty intrigues of Hanover among the German princelets. He was a man of limited intellect, but possessed of indomitable conrage, immense industry, and quite extraordinary obstinacy. His great idea was to revive the personal influence of the king, which had been lost at the accession of George I. In order to accomplish this it was necessary for him to destroy the Cabinet system, as yet in its infancy, and wreck the Whig party. George through his tutor, the Marquess of Bute, had become infused with the political ideas of the old Tory Bolingbroke, who had made his peace with the new dynasty and had become the exponent of an ideal of kingship eminently palatable to the new King.

Bolingbroke in his work *The Patriot King* argued that the party system was quite unreasonable, since on the one hand in practice it had resulted in denying to the king any real share of government, while on the other hand the ministry was selected from only one half of the best men in the country. He pleaded for a patriot king to construct a truly national Government composed of the best ministers irrespective of their party opinions. Another work studied by George III was Blackstone's *Commentaries on the Laws of England*, as yet unpublished when he came to the throne. These contained a lawyer's estimate of the British Constitution, very different

indeed from the reality, since the most important developments during the eighteenth century had been developments of custom and interpretation involving no alteration of the letter of the law. Blackstone represented the king as the head of the administration; Cabinet and Prime Minister meant nothing to him as a lawyer. George therefore set himself to carry out these ideals. But his objects must not be mistaken. He did not aim at reviving the Tudor or Stuart ideas of royal power. He made no attack upon the sovereignty of Parliament, nor did he attempt to alter the constitutional status of the judges as laid down in the Act of Settlement. He wanted to win back from a corrupt oligarchy the ground lost by monarchy because of the disabilities of George I and George II.

His first essays in politics were startling. On the first day of his reign he forced the great war minister Pitt to admit Bute into the Cabinet. He then personally drew up his first address to the Privy Council without consulting his ministers. But his most drastic act was to resume the royal patronage, which since 1714 had been exercised entirely by the leading Whig ministers. This was indeed a staggering blow to the Whigs; it meant that their control over the House of Commons gradually melted away like snow before the summer sun. The King used the patronage to secure the election of 'King's Friends' to the Commons, to bribe the wavering and the venal, both inside and outside the House, to support the royal policy, to undermine the Whig

influence in the Church and House of Lords, and to dominate the ministry. He used the same arts of Parliamentary manipulation against the Whigs as they had used against the Tories. The great Whig families, startled out of their complacent self-satisfaction by this unexpected competition, began to suspect for the first time that the perfect God-given Constitution of England, which they had worshipped for more than half a century, contained some fatal flaw. Their suspicion was correct. The flaw which made possible George III's attack upon Cabinet government lay in the representative system, which, as we have already seen, was hopelessly antiquated and corrupt.

When George III began his onslaught upon the Whigs he was favoured by the fact that their long years of unrestricted rule had caused them to lose their party solidarity and split up into little family groups and factions without any real political programme. These he played off one against the other until all had been successively in office and suffered defeat. He added to the confusion of the Whigs by consulting with ministers individually behind the back of the Prime Minister for the time being, and thus as far as possible preventing the Cabinet from tendering him its collective advice. But he never actually went to the length of taking part in Cabinet meetings. That fact alone showed that he could not really put back the hands of the clock to 1714.

By 1770 the Whigs were routed, and the King had built up a solid majority of 'King's Friends'

and Tories in the Commons. So Lord North was instructed by the King to form a ministry composed of men pledged to support the royal policy. During the twelve years of North's ministry George III was undoubtedly his own Prime Minister. North was simply the agent of the Crown for managing Parliament. In reality George directed policy, appointed and dismissed ministers, and rather than his nominal Prime Minister was responsible for the conduct of government. How long and how successfully he could have continued in this way had it not been for the American Revolution it is impossible to say. The disastrous failure of his American policy was mainly responsible for the breakdown of his attack upon Cabinet government.

Before we pass on to consider the downfall of George III's personal rule it is necessary to pay some attention to the career of the notorious John Wilkes, since it shows up very distinctly some of the glaring weaknesses in the Constitution such as made possible the King's attempt to throttle what we now consider to be the natural development of the British Constitution. John Wilkes, a dissolute man-about-town, proprietor of a scurrilous weekly paper called the *North Briton* in derision of Bute's nationality, published in No. 45 of his paper in 1763 a bitter attack upon the King's speech to Parliament regarding the recently made Peace of Paris. The King ordered George Grenville's ministry to prosecute Wilkes for the publication of a "seditious libel." The Government caused a general warrant to be

issued for the arrest of the "authors, printers and publishers" of the *North Briton*, no one being specified by name. Wilkes, who was arrested among others under this general warrant, claimed heavy damages from those responsible for his arrest, on the grounds that a general warrant was illegal. He won his case, which was tried before Chief Justice Pratt.

But the House of Commons, of which Wilkes was a member, expelled him, voted his articles a seditious libel, and ordered it to be burned publicly by the common hangman. Wilkes, however, had by this time fled to France to escape imprisonment for debt. The importance of the episode lay in the fact that it led the Court of King's Bench in 1765 formally to declare the illegality of general warrants, which were a gross interference with the liberty of the subject, since they rendered people who had no connexion whatever with the act concerned liable to arrest.

Some years later, in 1768, Wilkes returned to England and was triumphantly elected to Parliament as M.P. for Middlesex. The Commons, however, expelled him again on account of his having written a blasphemous attack upon Lord Weymouth, one of the Secretaries of State. On a second election being held Wilkes was again elected. Again the Commons declared his election invalid. A third time he was elected with the same result. A fourth election was held. Again Wilkes defeated the Government candidate, by 1143 votes to 296. Then the

Commons went to the extreme of declaring the defeated candidate, Luttrell, duly elected. Such a flagrantly unconstitutional act has rarely darkened the annals of the Commons. In effect, the majority in the House took upon itself to dictate to a constituency whom it should return as its member. Public opinion was indignant. At the next general election, however, when Wilkes again stood as candidate and was elected, he was allowed to take his seat without molestation. Since then the House of Commons has never again arbitrarily interfered with the freedom of the electorate.

But Wilkes was not yet done with. In 1771 he was once more in trouble with the House of Commons for ordering as an alderman of the City of London the release of two printers who had published reports of speeches in the House. Ever since the Revolution Parliament had jealously guarded the secrecy of its proceedings. It was anxious to be as independent of the electorate as possible. It believed in its own sovereignty and irresponsibility. The House on this occasion ordered Wilkes and the Lord Mayor to be imprisoned in the Tower, but finally gave in before the indignation of the citizens of London. Thenceforward the reporting of speeches was permitted. In fact, it was soon encouraged, so much so that when the old Houses of Parliament were burnt to the ground in 1834 a special reporters' gallery was provided in the new House of Commons. The importance of this is very great. If real responsible government was to develop in England

it was absolutely essential that the proceedings of Parliament should be made as public as possible, so that the electorate and public opinion might be enabled to exert that control over representatives of the nation that experience has shown to be so necessary. Had the House of Commons really represented the nation, and had the electorate been really independent, George III's attack upon the Cabinet could never have taken place.

One of the chief constitutional points raised by the quarrel with the American Colonies was the question as to the home Government's right to impose internal taxation in the colonies. From the strict point of view of law England had that right, but she had never made use of it. External taxation in the form of customs duties had been systematically levied ever since the beginning of Charles II's reign; the colonies had never disputed the mother country's right to do so. The colonists, however, in the matter of the Stamp Act and other internal taxation, raised the cry of "No taxation without representation," which they claimed to be a basic principle of the English Constitution derived from Magna Carta. We have already seen that Magna Carta contained no clause that by any stretch of imagination can be interpreted in that way. What is still more important, this has never been a principle of British government. In the eighteenth century the vast majority of males had no votes, while no woman could vote. This did not exempt them from taxation. Fundamentally, however, behind the question

of taxation was the more important one of responsible government. The colonial executives were all responsible to the home Government and not to the elected legislature in each colony. The colonies one and all wanted responsible government. It was not likely, however, that George III would be willing to grant to the colonies what he was doing his utmost to destroy in England.

American writers have not untruly suggested that in rebelling against England America was "fighting the battle of Englishmen at home." This accounts for the support given by the Whigs to the American cause. On one occasion Charles James Fox created a mild sensation by appearing in the House of Commons wearing the American colours. It is almost amusing to find the defeated party becoming in their day of adversity the champions of Parliamentary reform. But they were doomed to a long period of eclipse. Save for two fleeting glimpses of power in 1782 and 1806 they remained in opposition from 1770 to 1830.

On the other hand, George III's failure in the American war brought about the downfall of North's administration and eventually of the King's attempt at personal government. In 1780 the opposition was strong enough to pass in the House of Commons Dunning's motion "that the influence of the Crown has increased, is increasing, and ought to be diminished." The passing of such a motion at the present day would be sufficient to cause the immediate resignation of the whole Cabinet. In 1780

the King was too powerful to give in to it. But during the next two years motion upon motion was carried against the Government, until at last in March 1782 North could face the music no longer and handed his resignation to his master.

The Whigs naturally succeeded North. But they could not agree among themselves and were soon deprived of office by a chance coalition between the Tories under North and dissentient Whigs under Fox. The new ministers, however, soon exposed themselves to attack by introducing a Bill for the government of India which had the appearance of attempting to get all the patronage of the East India Company into the hands of the Whigs. George by underhand means secured the rejection of the Bill in the Lords and on the strength of that forced Fox and North to resign. He then called upon the younger William Pitt to lead the Administration. Pitt, who was not yet twenty-five years of age, formed a Cabinet—"a set of children playing at ministers and must be sent back to school," it was jeeringly called—and for some months held his ground in face of an overwhelming but steadily dwindling majority against him in the Commons. When in March 1784 Parliament was dissolved the elections, although conducted under the corrupt unreformed system, so far reflected the real temper of the country as to return a secure majority in favour of the new Prime Minister. It meant that the country had declared against the Whig oligarchy which had shown itself still unrepentant.

It is needless to point out that George III's actions in dismissing Fox and North and maintaining Pitt in office against a hostile majority in the Commons would now be unconstitutional. But it is possible that in the eighteenth century the modern constitutional understanding that the ministry depends for its continuance in office entirely upon the wishes of the House of Commons had not become quite as definite as it now is. But Pitt's triumph was not the King's triumph. In constitutional ideas Pitt was a follower of Walpole. He accepted the Whig idea of the collective responsibility of the Cabinet under the leadership of the Prime Minister. During his period of office the royal influence was reduced until once more the King exercised only a nominal power in the Government. This process was hastened by the insanity and blindness of George III in his later years and by the political incapacity of his son George, who became Prince Regent during his father's illnesses.

But the old King still maintained some shreds of his influence in the Cabinet. He usually forced Pitt to include in his Cabinet some 'King's Friend' who would be more loyal to the King than to the Cabinet. Through this agent George tried to influence Cabinet decisions. On the question of Catholic Emancipation Pitt was forced against his better judgment to give up his original intention of introducing it as a necessary accompaniment of the Irish Act of Union in 1800. Although he resigned office over the matter he soon returned, and could then have made the King

give way; he refrained from doing so because he feared that a struggle of this sort might cause the King to lose his reason again. His action caused irreparable harm in Ireland and did not save the King from further insanity. But after this occasion the King made no further attempts at interfering with the policy of the Cabinet, the existence and powers of which have since then never been threatened.

The Irish Act of Union was the tragic culmination of a century of progress in Ireland, which largely on account of the influence of the French Revolution suddenly ended in rebellion and bloodshed. In the reign of Henry VII the famous Statute of Drogheda, popularly known as "Poynings' Laws" had subordinated the Irish Parliament to the English Privy Council. As a result of the Irish rebellion against the Revolution Settlement in England in 1689 the Catholics, who comprised the great majority of the Irish people, were incapacitated from all participation in political life, including sitting in Parliament and voting at elections. Shortly afterward, in the reign of George I, the English Parliament passed an Act asserting its right to make laws affecting Ireland over the head of the Irish Parliament.

At the time Ireland was powerless to resist; but during the War of American Independence the Irish Protestants under the leadership of Henry Grattan demanded the independence of the Irish Parliament. In 1782 this was granted to them by the repeal of "Poynings' Laws" and the Act passed in George I's

reign. But no step was taken to enfranchise the Catholics or to make the Administration of Ireland, at the head of which was the Lord-Lieutenant and the Chief Secretary, responsible to the Irish Parliament. It remained responsible to the Crown. But the new position won for the Irish Parliament tended gradually to make it adopt a more tolerant attitude toward the Catholics, so that finally they were granted the franchise, though not the right to sit in Parliament.

At this juncture, just when it looked as if a new era had dawned for the unhappy island, the French Revolution broke out. The more hot-headed among the Irish were anxious to imitate France and set up a republican form of government. This would have meant the severing of Ireland's connexion with England. Unfortunately the Government badly bungled the situation when a conciliatory policy would have been completely successful. The Irish in desperation attempted a hopeless rebellion, relying upon French aid, and were crushed, the most appalling atrocities being resorted to on both sides. Pitt decided that the only way out of the difficulty was to effect a Parliamentary union between Ireland and England and at the same time relax all the penal statutes against Catholics. The Irish Parliament was bribed to pass an Act bringing its separate existence to an end, and in 1800 the Irish Act of Union was passed, but, as we have seen, the promise of Catholic Emancipation remained unredeemed. Not until 1829 was it fulfilled.

By the Act Ireland was to send one hundred members to the British House of Commons. Twenty-eight lay peers elected for life and four ecclesiastical peers represented Ireland in the House of Lords. Any Irish peer not elected to the House of Lords was to be at liberty to seek election to the House of Commons. This last arrangement was important, since it enabled two holders of Irish peerages—Castlereagh and Palmerston—to play a great part in English political life as members of the House of Commons.

CHAPTER X

THE EVOLUTION OF DEMOCRATIC GOVERNMENT

§ 32. The Industrial Revolution and its Constitutional Results. The reign of George III witnessed the beginnings of a marvellous movement of economic transformation in England to which historical writers have applied the term "Industrial Revolution." It was indeed a revolution, greater in its consequences than any other movement in history to which the name *of revolution* has ever been given. It was also exceedingly complex and many-sided, each of its aspects being intimately bound up with all the rest. It began as a revolution in the methods of textile manufacture, factory organization and newly invented machines taking the place of the domestic system of handworkers working in their own homes. The demand for iron stimulated by this led to a remarkable series of inventions in the iron and steel manufactures, which made possible the use of coal for the smelting of iron ore and the opening out of the great coal and iron fields of England, Scotland, and Wales. The development of steam-power—discovered long before the revolution—was the natural result of these conditions, as also was the almost amazing progress in communications. The multiplication of roads and canals was the first stage of the revolution in communications;

this was followed in the nineteenth century by the application of steam-power to the problem of locomotion by both land and sea, and later by the discovery of electric power. This last discovery alone has been nothing less than revolutionary in its effects: its use for the rapid transit of messages between places of almost any distance and for supplying power to the internal combustion engine has affected conditions of life all over the world to a degree difficult as yet to estimate.

Possibly the greatest general result of the Industrial Revolution has been its stimulance of the advance of science, and especially of the applications of science to such things as production, medicine, surgery, health, psychology, sociology, and government. This has created a revolution in man's attitude toward the forces of nature. No longer is he the timid creature shrinking in awe and terror before the mysterious powers of nature. He is now developing by means of scientific investigation a control over nature to an extent undreamt of a century ago.

Another important result of the Industrial Revolution in Great Britain has been the shifting of population from old to new centres, its concentration in densely populated town areas, and the growth of a predominantly industrial civilization. England has been changed from a chiefly agricultural country to a chiefly industrial and commercial one. The most obvious aspect of this change is that whereas at the beginning of the reign of George III the vast majority of the population of Great Britain lived in

the country, now it lives in towns. The introduction of large-scale production, too, has reduced the mass of the population from independent domestic workers to wage-earners most of whom cannot possibly hope to rise above that condition.

The constitutional effects of all this change were very marked. The shifting of population and its concentration in new town areas made necessary the construction of an entirely new system of local government. As most of the new towns enjoyed no direct representation in Parliament they set up a great outcry against the antiquated representative system and the rotten and pocket boroughs. In the nineteenth century they soon became a powerful enough political factor to force Government to carry through a complete reform of the franchise.

One of the most noticeable and immediate effects of the Industrial Revolution was the pauperization of the lowest classes. Some of the most far-reaching industrial changes came at the time of the great wars with Napoleon, which unduly aggravated the already prevailing distress and caused Government to resort to measures such as the vicious system of money doles to able-bodied paupers, which increased rather than diminished the evils they were intended to palliate. When the wars ended a whole crop of new problems connected with Poor Law administration, factory conditions, public health, and crime were pressing for consideration. In dealing with them Parliament was forced to increase the sphere of Governmental activity to a tremendous extent, and

to construct new departments with new officials and new methods of procedure. The constitutional history of the nineteenth century, therefore, is a record of the increasing complexity of the executive government, of the reform of the franchise and the increase of the scope of the work of Parliament, and of the complete reconstruction of local government. The most meagre study of the political history of England *from* the time of the *younger* Pitt's sudden rise to power will make it clear that these developments ought to have started earlier than they did by nearly half a century. The outbreak of the French Revolution and the consequent revolutionary wars, which helped to cause reaction and misery in Ireland, had also the effect of checking English constitutional progress for more than a generation. The excesses of the French revolutionaries caused a reaction against all political advance in England. The movement for Parliamentary reform which had been showing *signs of great vigour just before the Revolution* was practically driven underground by the harsh attitude of the Tory ruling classes. So far did the process of reaction go that for some time during the war period freedom of speech was seriously curtailed and even the Habeas Corpus Act temporarily suspended. At the conclusion of the war the economic distress became so intense as to cause a good deal of disorder in the country. But the Tory Government, completely ignorant of the great social and economic changes that had swept over the country, failed not only to grant the necessary reforms,

but even to realize their necessity. Repression and reaction, therefore, were the main features of Governmental policy until the later twenties of the century, the Tory aristocrats in the ministry being strongly supported by the predominant landed interest in both Houses of Parliament. Toward the end of the twenties, however, the first tentative beginnings of a great period of reform appeared, and England began to steer her course toward democracy.

§ 33. **The Reform of Parliament.** In the early years of the nineteenth century the House of Commons was anything but a democratic body. Roman Catholics, Protestant Nonconformists, Jews, Quakers, and atheists were excluded from becoming members of the House. County members must possess landed estate of the annual value of £600; borough members must possess landed estate of the annual value of £300. Voters in county elections must possess freehold land of the annual value of forty shillings. In the boroughs, on the other hand, the franchise varied considerably. In most boroughs it depended entirely upon the terms of the charter; in a few it depended upon ancient custom. There was a great variety of charters and of ancient customs. Thus the franchise might be—and in a few boroughs actually was—very democratic. If there existed no charter or usage to the contrary then the voters would include all the 'inhabitant householders' who paid their share of the borough taxes. In one or two cases it was even more democratic, anybody possessing a single room with a fireplace in it being entitled

to the vote. This was known as the 'pot-boiling' franchise, though by a curious mistake in spelling these voters were more often known as the 'pot-wallers' or 'potwallopers.' But in most boroughs the franchise was more limited. In some it was vested in the 'freemen' of the borough; in such cases the term 'freemen' was generally applied only to the members of the ancient gilds or livery companies. In many boroughs only the governing body of the borough—*i.e.*, the Mayor and aldermen—might exercise the vote. These were usually pocket boroughs or rotten boroughs. The machinery for carrying out an election was still almost exactly the same as it had been in the reign of Edward I, though all sorts of customs and practices had arisen since then considerably altering election methods.

Under conditions of election such as these it is quite astonishing to find Parliament ever truly representing the wishes of the nation. But, as we have seen in the last chapter, there were many occasions when Parliament did strongly reflect the national will, and when a general election resulted in the defeat of a ministry not possessing the confidence of the nation. Still, the system was bad and corrupt; it rested upon the predominance intellectually as well as politically of the great families. As soon as this tended to decay owing to the effects of the Industrial Revolution, the old system was doomed. The main question at issue at the end of the long Tory *régime* was whether the old conditions would have a peaceful or a revolutionary end. It

was a lucky thing indeed for Great Britain that her people had the good sense to choose the path of peaceful, if slow, constitutional evolution. Any other course, which tended unduly to hasten changes, would have been dangerous, if not disastrous, considering the extremely backward state of the political education of the great mass of the population.

The earliest successful attacks upon the old conditions were levied against the religious disqualifications. In 1828 the Whig leader Lord John Russell introduced a measure into Parliament for repealing the Test and Corporation Acts. These had long been evaded in a wholesale manner under the shelter of the annual Act of Indemnity passed ever since the days of Walpole. Russell succeeded in securing the co-operation of Peel, the leader of the dominant Tory party in the Commons; the Acts were repealed; but, in place of the religious test in accordance with the rites of the Anglican Church, a declaration "on the true faith of a Christian" was substituted, which therefore still excluded Jews, other religionists, and atheists. Catholics too were still excluded, since they were unable to take the oath of supremacy. In the same year as the repeal of the Test and Corporation Acts the Irish Catholic leader Daniel O'Connell, who had long been agitating for Catholic Emancipation, stood for Parliament at a by-election for County Clare and headed the poll. The Tory Cabinet, influenced by Wellington and Peel, decided that in face of this show of opinion the grant of Catholic Emancipation could no longer

be refused. Supported by the Whigs, therefore, but against the obstinate opposition of George IV and the bishops, Catholic Emancipation was passed through both Houses, and the King dared not refuse his assent. The Act established practical equality between Catholics and Protestants, only a few offices such as those of Regent, Lord-Lieutenant of Ireland, and Lord Chancellor being still denied to Catholics.

In 1830 on the death of George IV Parliament was dissolved, and in the ensuing general election a small Whig majority was returned. The Tory Cabinet was soon defeated and forced to resign. Its place was taken by a Whig ministry under Lord Grey pledged to introduce a measure of Parliamentary reform. After a struggle almost unparalleled in the history of Parliament a comprehensive measure of reform drafted by Lord John Russell was passed and received the royal assent in July 1832. This Act, the first of four great measures of Parliamentary reform passed within one century, greatly extended the franchise and simplified its rules. In county elections in addition to the forty-shilling freeholders men holding property by other tenures than freehold received the vote if their annual income from such property were not less than £10. Thus holders of such property for life, by long lease, or by copyhold were enfranchised. Holders of property by short lease worth £50 a year and occupiers paying an annual rent of £50 were also enfranchised.

In the boroughs the qualification for the exercise of the franchise was made uniform. All occupiers

of houses, shops, or land of the clear yearly value of £10 received the vote. They must, however, have been in occupation of their premises for one year, or have resided in them for at least six months. The difference between occupation and residence is between using premises for some purpose—as a shop or warehouse, for example—and actually living in them. All freeholders or freemen who had previously held the franchise retained it.

In addition to these regulations corrupt borough constituencies returning no less than one hundred and fifty members were abolished. In the redistribution of seats several counties received increased representation, while forty-two new boroughs, representing the newly developing industrial areas, were enfranchised. One other important change was made by the Act. Before each general election a register of voters was to be prepared; no one was to be allowed to vote who was not on the register. Strictly speaking, therefore, the franchise qualifications qualified a man to have his name registered upon the register of electors. This is still the rule. The advantages of this method are obvious. It enables elections to be carried out in the shortest possible time and practically prevents fraud. Previously the voter appeared at the polling booth, gave his vote, and then swore an oath to the effect that he possessed the necessary qualifications.

The Reform Act of 1832 enfranchised the lower middle-class people in the boroughs and counties, but excluded the majority of the labouring classes

from voting. Its results were very important. The upper classes still continued to be the political leaders of the country, but the days of reaction were brought to an end by a wonderful outbreak of reforming zeal, which freed slaves, reformed the Poor Law, completely reorganized municipal government, improved conditions of labour in factories and mines, recast the entire criminal code, and established 'free trade.'

Between the first and second Parliamentary Reform Acts further disabilities were removed from the path of aspirants to Parliament. In 1833 a Quaker was allowed to make a simple affirmation in place of the usual oath enforced upon members of Parliament. Four years later an Act of Parliament extended this privilege to all Nonconformists who were debarred from any office whatever through religious objection to oaths. At the present day anyone having a conscientious objection to taking an oath under any circumstances may make a simple affirmation. In 1838 a slight alteration was made in the property qualification for members of Parliament mentioned at the beginning of this section; not until 1858 was it completely abolished. In that year also a Jewish Relief Act admitted Jews to Parliament. Atheists and others were still excluded, until in 1867 the words "on the true faith of a Christian" were omitted from the Parliamentary oath. Religion, therefore, no longer remained an obstacle to election to Parliament. Sex, however, still imposed a disqualification: women were not admitted to seats in Parliament until 1919. Nowadays persons of

either sex, of any or no religion, may become members of Parliament.

The Reform Act of 1832 disappointed the more ardent advocates of reform. They expected it to be a panacea for all evils. When the longed-for millennium did not dawn the Radicals, as the more advanced reformers were called, decided that it was because the reforms had not been sufficiently drastic. They therefore drew up a document known as the "People's Charter," in which they formulated a comprehensive programme of reform under the six headings of universal suffrage, vote by ballot, annual Parliaments, equal electoral districts, abolition of the property qualification for members of Parliament, and payment of members. Between 1838 and 1848 the Chartist agitation swept over the whole country. It was fed by the great economic distress and by the hatred with which the poorer classes viewed the new Poor Law. Luckily, however, both Government and agitators showed praiseworthy moderation. The demands of the Chartists were refused by Parliament. After an almost dangerous flicker in 1848 the movement died out. The beginnings of a quite phenomenal period of economic prosperity just at that time caused Chartism to be "laughed out of existence." In those days the demands contained in the "People's Charter" were considered to be nothing short of revolutionary. Since then, however, every item save that of annual Parliaments has been realized.

In 1867 another important measure of franchise

reform was passed by the Conservative party led by Disraeli. There was in the country a great demand for a further extension of the franchise. The Conservatives were really opposed to any additional change in this direction, but Disraeli, who was anxious to popularize his party, won them over and carried his measure by methods as brilliant as they were unscrupulous. The Act redistributed a few seats by enfranchising eleven new boroughs at the expense of a number of smaller ones, which lost their individual members and were merged into their county constituencies. Certain of the counties also secured extra members, while the University of London was made into a Parliamentary constituency with one member. Scotland was given seven more members by this Act. In the counties the occupiers of property from which rates—*i.e.*, local taxation—to the extent of £12 were annually due received the vote. In the boroughs all householders were enfranchised and lodgers who paid £10 a year in rent.

Full household suffrage for both counties and boroughs was established by Gladstone's Representation of the People Act of 1884. This Act therefore enfranchised practically the whole labouring population of Great Britain. It was the prelude to a far-reaching redistribution of seats in the following year. This was made urgently necessary by the great shifting of population which had been in progress throughout the century. In dealing with the situation the Government found it necessary to abandon the old principle of representation by communities,

which from the beginning of Parliament's career had been in vogue, and to reorganize completely the electoral divisions of the country upon the basis of numbers. In a rough sort of way, therefore, the number of representatives sent to Parliament by a constituency was to vary in proportion to the number of its population. Previously there had been no necessary connexion between the number of members returned by a constituency and the number of its population, all constituencies being regarded as communities, whether county or borough, with roughly equal representation. The application of the new principle led to the splitting up of the larger counties and towns into districts each separately represented. It also took away individual representation from all boroughs with less than 15,000 inhabitants, gave Scotland twelve more members, and raised the number of the House of Commons to 670.

During the century many measures were passed to prevent corrupt practices at elections and the corruption of members of Parliament. They are too numerous and too detailed to be dealt with in a small work such as this. The most important of them was an Act passed in 1883 making direct bribery not only illegal, but almost impossible. The Ballot Act of 1872 was a further advance toward establishing the complete freedom of the elector. John Stuart Mill and other philosophical Radicals opposed this reform as likely to cause the elector to lose his sense of responsibility, but their arguments were more pedantic than real. Another measure

passed in 1868 made the judges of the High Court responsible for the trial of election petitions—*i.e.*, petitions against successful candidates alleging irregularity of election. Previously these had been tried either by the whole House of Commons or a committee of the House, and had often caused party feeling to run high and prevent cases being tried on their merits The case of Wilkes was the most flagrant example of this sort of practice.

With the coming of the twentieth century a new organized party, the Labour party, appeared in the political field. At the general election of 1906 enough Labour members were returned to Parliament to make their influence felt in a decided manner upon Governmental policy. A movement for further democratic reforms was therefore instituted, which in 1911 led to the passing of the Parliament Act, whereby the House of Lords lost its veto upon legislation sent up to it by the Commons. The veto of the House of Lords had long been a sore point with the Liberal party, since it was more often used against Liberal than against Conservative legislation. In 1909 the Lords went so fat as to tefuse consent to the Budget. In doing so they used a power which most people considered they could no longer constitutionally use. A sharp constitutional struggle therefore ensued, resulting in the passing of the Parliament Act. By it the House of Lords must pass the Budget submitted to it by the Commons within one month of submission; if not, the Bill goes automatically up to the king for royal assent. In the

case of ordinary legislation the Lords may reject a Bill three times in successive sessions, but on the third rejection it goes automatically up to the king for sanction, provided that two years have elapsed between the second reading on the first occasion and the third reading on the last occasion.

The Parliament Act was not intended to be a final solution of the problems arising out of the survival of a powerful hereditary chamber in a Constitution rapidly becoming more and more democratic. Ever since the middle of the nineteenth century statesmen with progressive views had felt that the House of Lords was an anachronism. Bagehot with characteristic humour had dubbed the peers "the accidents of an accident." No practicable scheme of reform, however, was forthcoming. Liberals realized uneasily that a reformed House would have to be given greater powers than they were willing to concede. Conservatives had no desire to change a body which contained an ever-increasing Conservative majority. And, with no non-Tory Government yet in existence powerful enough to abolish it, the House of Lords still remains. The Parliament Act has so far not effected much reduction in its powers. Its suspensory power is formidable, and has been used against Liberal and Labour Governments with considerable effect, since where serious clashes of opinion have occurred the Government in power has usually been unwilling or unable to wait the necessary two years in order to defeat the Lords'

veto. Hence it has either dropped the measure entirely or bought off the Lords by emasculating it.

The Representation of the People Act of 1918 was the fourth and most comprehensive of the great series affecting the composition of the House of Commons. It established universal manhood franchise, extended the vote to all women over the age of thirty, limited plural voting and election expenses, revised the rules for the conduct of elections, and carried out another redistribution of seats. Valid franchises were defined as (*a*) residence, (*b*) occnpation of business premises, and (*c*) the possession of a university degree. No one might exercise a vote in more than two different constituencies in the same election. Evasion of this rule was largely prevented by making all elections take place on the same day—*viz.*, the seventeenth day after the issue of the election writ. The period of qualification was reduced from one year to six months. Seats were redistributed upon the basis of one member for every 70,000 inhabitants, but boroughs with not less than 50,000 inhabitants retained their separate representation. By this arrangement, while the counties lost five seats, the boroughs gained no less than thirty-six, and the enfranchisement of new universities gave them six additional seats. The result of the measure was to add eight million voters to the register, and to raise the nnmbers of the House of Commons to 707. Bnt as this included 105 Irish members, and the Sinn Feiners refused to take

their seats, the problem of accommodating a full House did not become as acute as it might otherwise have been. The Act of 1922 establishing the Irish Free State (now Éire) relieved the House of Commons of its South Irish members and left it with 615 members. In 1928 women were at last given the vote on the same terms as men: that is, their age qualification was reduced to twenty-one. The qualifying period of residence was reduced to three months.

A hundred years ago the Chartists demanded manhood suffrage, equal electoral districts, the abolition of the property qualification for Members of Parliament, vote by ballot, payment for M.P.'s, and annual Parliaments. The Early Victorians regarded these demands as dangerous and revolutionary. To-day only the last has not been realized. The Parliament Act of 1911, however, reduced the maximum length of life of a Parliament from seven to five years, and the Parliament which passed that Act voted salaries of £400 a year to members. In 1937 this became £600.

We have watched the process whereby the House of Commons has become perfectly democratic in constitution. We are so apt to refer to that House alone as 'Parliament' that the fact of the essentially undemocratic nature of Parliament tends to be obscured. The problem of the House of Lords is one of our greatest unsolved constitutional difficulties. A second chamber is useful in many ways, and in particular to relieve the congestion of business that the detailed and complicated character

of modern legislation tends to create. But it becomes more and more obvious that the time has come when the House of Commons must be supreme in the legislative sphere, and it is essential that an unrepresentative body should not be in a position from which it can dictate to the electorate.

During the present century the rise of the Labour party and the consequent breakdown of the old two-party system has accentuated a further defect in our Parliamentary system. In many constituencies where all three parties are strong the 'Right' candidate is successful because the 'Left' vote is split between two candidates, who together may poll more votes than those cast for the winning candidate. And in a General Election this state of affairs may mean that the winning party actually polls a minority of the total votes cast. There has therefore been considerable agitation in favour of some scheme of Proportional Representation. But although the Free State of Ireland (now Éire) adopted the system when it separated from Great Britain, and the Liberal party was converted to the doctrine in its post-War days of adversity, the electorate as a whole remains cold or hostile to it. Its adoption would necessitate a complete remapping of the constituencies on a much bigger scale, and many people shrink from it for fear that it might lead to a multiple-party system with all its disadvantages.

§ 34. **The Development of the Modern Executive.** The earliest kings of England governed through the officers of their household. The king's steward,

butler, chamberlain, marshal, and other subordinate officials executed his commands, aided him in the administration of justice, and formed a permanent body of advisers about him. As time went on and feudalism began to permeate the Government these high officials, who were great barons, began to make their offices hereditary. Such a development occurred in every country of Western Europe. Now the Norman kings were anxious to check the spread of feudalism wherever it was dangerous to the royal power. They could not prevent the great offices of the household from becoming hereditary, so they created new officials to do the actual work of the old ones, the latter retaining their titles purely as dignities without real power. The new officials were paid by and were responsible to the king. Their titles were similar to those of the officials they displaced. Thus the hereditary chamberlain was the Lord High Chamberlain, and the working chamberlain was the Lord Chamberlain. The hereditary steward was the Lord High Steward; the working official was the Lord Steward of the Household. And so on.

But the Normans also created other officials having little or no connexion with the royal household. Their chief official, as we have seen, was the Justiciar, who until the days of Henry III, when the office was extinguished, acted as viceroy during the absences of kings from the country. Another important official was the Lord Chancellor, the head of the royal scribes who worked behind the screen (Latin, *cancelli*) in the royal chapel. As this part of the

church was called the chancel, so its chief occupant secured the name of 'chancellor.' In the Middle Ages he was always a high ecclesiastic; hence he could not make his office hereditary. Gradually during the medieval period he became more and more powerful, until with the abolition of the office of Justiciar he became the king's chief minister. Second only to the Chancellor in importance, however, was the Lord High Treasurer, who kept the Pipe Roll upon which all the receipts and payments of the Exchequer were entered.

As government became more highly organized and its functions more mechanical it became impossible for the king, however energetic and able he might be, to conduct personally the work of all the departments of State. Henry I and Henry II introduced a great deal of specialization into the routine work of their Court. This practice tended to develop further and further in the later Middle Ages. Hence the question of the authentication of official documents, royal orders, and receipts became of great importance. The rule gradually grew up that this must be done by affixing to a document the seal of the official responsible for issuing it. Important State documents would be authenticated by the Great Seal, which was usually in charge of the Lord Chancellor. Orders for the election of representatives to Parliament were authenticated by the Great Seal. Magna Carta too received the Great Seal. Parliamentary legislation sanctioned by the king received—and still receives—the Great Seal.

The king, however, possessed a seal of his own, which was used to authenticate his private or semi-private correspondence. Very often documents of this type had to be countersigned by an official. For instance, if the king wished personally to order a payment of money out of the Treasury his signature and seal were not sufficient authentication; the order must be countersigned and sealed by a special official. Gradually as time progressed and governmental business grew more complex the use of the Great Seal was reserved for only the more important documents of State. The king's private seal became entrusted to a special official, the Lord Privy Seal, and was used for the authentication of documents of less general importance than those to which the Great Seal was affixed. Thus meetings of the King's Council would be summoned by documents bearing the privy seal.

When the privy seal became no longer in reality the king's private seal its place was taken by another personal seal used by the king and called the signet. Even that, however, was in time entrusted to a special official with a separate office—the Signet Office. Various documents were thus authenticated in various ways, and a mass of laws grew up regulating the procedure—always of a highly formal nature—regarding the use of each of these seals. The detailed history of these seals is of great interest and constitutional importance, since it gives us much information, direct and indirect, about the development of the powers of the king and his officials and

of the work of the governmental machine. Unfortunately, such an account is not possible in a brief survey such as this. One interesting example, however, of the complexity of the system may be given. In the reign of Henry VIII a statute was passed prescribing the correct procedure for every exercise of the royal authority necessitating the use of the Great Seal. In the first place, the king by a document signed by his 'sign manual,' as it is called, and drawn up by a special official—usually a King's Secretary, his closest confidential official—who countersigns it, 'moves' the Signet Office. On receipt of it the keeper of the signet issues another document 'moving' the office of the Privy Seal, which in its turn 'moves' Chancery to issue the necessary royal order, or whatever it may be, under the Great Seal. Of course, in this process every official received his particular fee and took his full time in carrying out his part of the paraphernalia. The importance of this is great. It shows the executive as a vast machine, the various officials connected with which exercise special powers which even a king such as Henry VIII cannot arbitrarily dispense with. While the power of the Crown—*i.e.*, the governmental machine—has enormously increased, the personal powers of the king are limited by those exercised by his great officials. Possibly this fact may help readers to understand how easily the Cabinet usurped the powers of the king in the reigns of George I and George II, and how limited would have been George III's victory had his onslaught upon the Cabinet been successful.

In the thirteenth century, when the dignity and importance of the Lord Chancellor's office became very great, a new official emerged—the King's Secretary. He was the keeper of the king's secrets. At first he worked in the Chancery doing writing for the king that did not need the authentication of the Great Seal. In the fifteenth century a second secretary was appointed. He seems to have conducted the king's foreign correspondence. The work of these secretaries was intimately connected with the work of the Privy Council. As the latter developed so their importance also grew. In Tudor times they were the most important ministers of the Crown and were designated Secretaries of State. Thomas Cromwell, both the Cecils, and Walsingham were all Secretaries of State.

In the seventeenth century, as has already been shown, the Privy Council's control over various executive departments was often exercised by a committee of the Council. In the Restoration period the Secretaries of State became members of every committee of this sort. This gave them greatly increased powers, since, at a time when the whole Privy Council rarely met, the resolutions of these committees were carried into effect by the Secretaries in the name of the Privy Council. They were always members of the inner rings of councillors, the 'Cabals' and the 'Cabinets,' which were the deciding factor in the administration at the end of the century. Later on, as the Cabinet system evolved, the Secretaries of State were always

members of the Cabinet. Their duties were divided upon a geographical basis. The Northern Secretary was something like a Foreign Secretary at the present day: he carried on diplomatic correspondence with France, Germany, and the Northern Powers. The Southern Secretary looked after relations with the Southern Powers of Europe, and also managed such Home and Irish business as was not in the province of other departments such as the Admiralty, the Treasury, the Board of Trade, and so forth.

In the eighteenth century other Secretaries of State appeared. A Secretary of State for the Colonies had a short existence until England's failure in the War of American Independence caused the abolition of his separate office in 1782. In that year the Northern and Southern Secretaries became Foreign and Home respectively, and a new Secretaryship for War and Colonies was created. In 1854 this last office was split up into two, war and colonies being dealt with by separate Secretaries. Four years later the abolition of the East India Company caused the creation of a fifth Secretary of State, for India. Since then three more Secretaries have been added —for Air, for Scotland, and for the Dominions.

The history of the Treasury is interesting in connexion with the evolution of the modern executive. In James I's reign the office of Lord High Treasurer was 'put *into commission*,' as the technical phrase has it. Instead of its being filled by one man, its powers were exercised by a committee known as the Lords Commissioners of his Majesty's

Treasury. This led to the separation from the Treasury of the Exchequer under its Chancellor, who had been in the Middle Ages a subordinate Treasury official. At the time of the Restoration the Exchequer was concerned with purely routine financial work. Matters of policy were decided by the Lords of the Treasury. Sometimes the king himself would be present at their meetings. If he were absent the First Lord of the Treasury would preside.

As the Cabinet began to develop in the eighteenth century, its head, the Prime Minister, found that the most convenient post to occupy was that of First Lord of the Treasury. From this vantage-point he could concentrate his attention upon matters of policy while leaving the routine work to his subordinates. The office of First Lord therefore became practically a sinecure usually filled by the Prime Minister of the day. The result of this was that the official work of the Treasury Board gradually declined in importance, and the Exchequer began to assume increasingly greater control over the national finances. This made the office of Chancellor of the Exchequer of great political importance. In the nineteenth century the Chancellor of the Exchequer became next in importance only to the Prime Minister. If the latter were a peer then the former would be the Leader of the House of Commons, sitting with his other ministerial colleagues on the 'Treasury Bench' immediately on the Speaker's right hand. Nowadays, however, the Prime Minister is always a member of the House of

Commons, and the Chancellor of the Exchequer is his right-hand man. The Lords of the Treasury no longer meet as a body. Their chief business is to supervise all payments of money from the Treasury. Not a single penny may be paid out save by the authority of a document authenticated by the royal sign mannal and countersigned by two Lords of the Treasury.

The chief duty of the Chancellor of the Exchequer is to direct national financial policy. He must collect estimates of expenditure from all the various departments, over whose spending powers he can exercise a good deal of control. He must also make proposals to the House of Commons regarding the taxation necessary to meet the expenses of government for each coming year. These are collectively known as the Budget. They are always discussed beforehand by the Cabinet and are only introduced to Parliament by consent of the Prime Minister. If any important Budget proposal were defeated in the Commons it would be taken as equivalent to a vote of no confidence in the Cabinet, which would either resign or advise the king to dissolve Parliament. Its action would depend largely upon the state of public opinion.

We have seen that in the Middle Ages the Lord Chancellor was the most important minister of the Crown. Later, however, his importance was dimmed by the rise of other officials. But he has always remained one of the greatest of the royal officials, and his post still carries a salary equal

to that of the Prime Minister, the present salary being £10,000 a year. Before the end of the Middle Ages his work was both judicial and administrative. It was his business to advise the king on anything to do with the exercise of the royal discretion, especially in cases of law. English common law was extremely rigid, and tended to lag behind the progress of civilization. From the thirteenth century onward hundreds of petitions for redress of grievances, due either to the unfair operation of existing law or the absence of law covering the particular case, began to pour into the Curia Regis. The early development of Parliament was one result of this state of affairs. Another result was the development of Chancery as a court of 'equity.' In this Court of Chancery the Chancellor was chief judge. As he was able to exercise greater influence over the king in the matter of judicial appointments, he gradually became the chief judicial officer of the Crown.

The Chancellor was also an administrative officer. As Keeper of the Great Seal he supervised the issue of important royal 'writs,' witnessed the conclusion of treaties with foreign Powers, summoned meetings of Parliament, and had a hand in most of the great matters of State. Sitting on the woolsack, he presided over meetings of Parliament in the absence of the king. When Parliament was separated into two Houses in the reign of Henry VIII, the Lord Chancellor became chairman of the House of Lords. From that time onward he has been an active member of all three departments of government—the executive,

the legislative, and the judiciary. He is now a member of the Cabinet, rising and falling with it. He is, therefore, the only judicial officer of the Crown whose tenure of office depends upon purely political forces.

The ancient office of Lord High Admiral was abolished in the eighteenth century and its duties transferred to a Board, the head of which was known as the First Lord of the Admiralty. In the nineteenth century he became the minister responsible to Parliament for the administration of the navy, and has since then had a place in every Cabinet. Another important Crown official who became included in nineteenth-century Cabinets was the Postmaster-General, whose work has multiplied since the introduction of the electric telegraph and the penny post.

The committee of the Privy Council known in the seventeenth century as the Board of Trade was reorganized at the end of the eighteenth century under a President and Vice-President, the former becoming a Cabinet minister. In the middle of the nineteenth century the duties of the Board were practically concentrated in the hands of the President and his second in command, who became Parliamentary Secretary to the Board, the office of Vice-President being abolished. The 'Board' is now a purely formal body, which never meets; it only exists on paper. Another important 'Board' which began as a committee of the Privy Council is the Board of Education. Its composition is entirely nominal, as the work of the Education Department is under the control of the President of the Board

assisted by a Parliamentary Secretary and a staff of officials. The President of the Board of Education is always a member of the Cabinet. Another department long designated a 'Board,' but now a Ministry, is that of Agriculture and Fisheries. Its head also is of Cabinet rank.

The new developments of Poor Law administration, housing, and State insurance for sickness caused the rapid evolution of a department known since 1919 as the Ministry of Health, now represented in Parliament by a front-rank minister and a Parliamentary Secretary. It started with the creation of the Poor Law Board in 1847 and of the General Board of Health in the following year. Later on for a time Public Health matters were under the control of the Home Office. In 1871, however, Gladstone created the Local Government Board to take over the administration of the Poor Law, the Public Health Acts, and ordinary matters of local government. Its President became a Cabinet minister. As the Ministry of Health it is to-day one of the most important departments of government.

Equally rapid in its development has been the Post Office. The first Postmaster-General to attain Cabinet rank did so in 1852. In those days the Post Office conveyed letters, books, and money orders. Since then the main steps in its development have been the establishment of the Savings Bank (1861), the taking over of the telegraph service (1870), the institution of the inland parcel

post (1883), and the taking over of the telephone service (1911). In addition the Post Office nowadays collects contributions under the National Health, Unemployment Insurance, and Contributory Pensions Acts, and distribntes old age pensions. It also collects the revenue from licences. It employs nearly 200,000 persons, and earns a profit for the State of about £4,000,000 a year.

An executive department sometimes represented in the Cabinet is the Office of Works, which has care of the royal palaces and parks and of certain public buildings. Its head is known as the First Commissioner of Works.

Besides the above offices the executive contains certain relics of old offices which are now almost sinecures, but are useful in that they may be filled by men of great distinction and experience whose advice and support are desired by the Cabinet, but who are not anxious or able to nndertake the arduous duties of head of a working department. On the continent of Enrope such men would be called 'ministers without portfolio.' Such are the Lord President of the Council, the Lord Privy Seal, and the Chancellor of the Duchy of Lancaster. The last-named, however, is not always a member of the Cabinet.

During the Great War a vast number of new executive departments was created. Many of them died natural deaths at the end of the struggle. Such were the Ministries of Munitions, National Service (*i.e.*, man-power), Food, Shipping, Blockade,

Information (*i.e.*, propaganda in enemy countries), and Reconstruction. Others still with us are the Ministries of Pensions, Labour, and Transport, and the Department of Mines (now under the Board of Trade).

§ 35. The Cabinet since the Younger Pitt's Day. The main principles of Cabinet government emerged clearly for the first time under the younger Pitt. The first half of the nineteenth century saw the consolidation of the system. Under a third great Prime Minister, Sir Robert Peel, the older form of the system reached its zenith. The administration was still sufficiently small in size during his time for one man effectively to control all its departments and at the same time direct national policy. Moreover, when he first formed a Government in 1834 he was able to establish firmly the principle that the Prime Minister chooses his own colleagues and is responsible for their selection. The collective responsibility of the Cabinet became a reality for the first time.

Peel created a great tradition which has influenced all party leaders since his day. Hence, notwithstanding the tremendous developments and changes that have taken place in the administration during the past century, both the nature and the methods of Cabinet government have changed little in essence. Up to the Great War it remained an informal body without legal status as an organ of government. Its meetings were secret and

were presided over by the Prime Minister. It existed to co-ordinate the work of the different branches of government and to hammer out a consistent national policy under the leadership of the Prime Minister. And ministerial responsibility to the House of Commons was fully maintained.

The relations between the sovereign and ministers during this period form an interesting study, but limitations of space forbid all but a mere cursory reference to them. Queen Victoria's view of her position was not strictly that of a constitutional sovereign. This became evident early in her reign when over the famous Bedchamber Question (1839) she managed to prevent Peel from taking office as Prime Minister by refusing to change her Whig Ladies of the Bedchamber. Later on in the reign her intense dislike of Gladstone and Radicalism led her to exercise considerable influence against her Liberal ministries. She was particularly anxious to control foreign policy. Her struggles with Palmerston on this subject show how important a part a sovereign could still play when she had the advantage of carrying on a private correspondence with many of the royal personages of Europe. As time went on she acquired the added advantage of family relationship with several ruling dynasties, as well as an enormous personal prestige. For better or for worse, she prevented the kingship from becoming a mere cipher or rubber stamp; and in an age of great statesmen this was no mean achievement. But the doctrine of ministerial responsi-

bility remained unimpaired, the stability of the Cabinet system was in no way threatened by her actions. And succeeding history has shown that while it is possible for an able and experienced sovereign to exert a good deal of influence upon the conduct of affairs, or even upon the fate of a ministry, he possesses no actual political powers.

After Peel's day, as the administration extended its scope and multiplied its functions, the size of the Cabinet gradually increased, while the Prime Minister's contact with individual departments correspondingly decreased. Pitt had no more than six colleagues in his Cabinets. Those at the end of the nineteenth century contained from twelve to sixteen members, and with the twentieth century the number rose to over twenty. Long before the Great War the Cabinet had become too large. So many shades of opinion were represented in it that there was danger of weak compromise in vital matters and of lack of administrative efficiency through inadequate control. An inner circle tended to grow up round the Prime Minister which discussed matters informally and arrived at decisions before the full Cabinet met. Cabinet meetings thus became more formal and often merely registered decisions already made by the inner circle.

During the War this tendency was crystallized by the formation of a War Cabinet of five or six members superimposed upon the ordinary Cabinet. The latter became a mere collection of heads of

departments kept in touch with the War Cabinet by the Cabinet Secretariat, a new institution which grew up out of the pre-War Committee of Imperial Defence for the purpose of co-ordinating the work of the different departments concerned. In addition, the Cabinet proper developed a number of committees and sub-committees with specialized functions, and the Cabinet Secretariat played a very important part in linking up each section of this highly complicated machine. The system gave the Prime Minister almost dictatorial control over the Government, and considerably reduced the control of the House of Commons over both individual departments and the executive as a whole. With the coming of peace, therefore, some return was made toward the older system. The War Cabinet was abolished, and the work of the Cabinet committees considerably reduced. The Cabinet Secretariat, however, survived, and has remained as a very powerful instrument whereby the Prime Minister controls policy, especially in relation to foreign affairs.

During the past half-century other factors also have contributed their share in increasing the power of the Executive. Since 1885 the system of single-member constituencies has tended to exaggerate governmental majorities, and this fact, together with the striking development of party machinery, has given the Cabinet almost autocratic control over the Commons. Furthermore, the complexity of modern legislation and the demand

for great remedial measures has resulted in a condition of affairs whereby most of the time of the House has to be given to the Government to use as it pleases. Thus, while in theory any member may propose legislation, in practice measures other than those introduced by the Government stand little or no chance of being discussed save after almost interminable delays. In the words of A. L. Lowell, "it can almost be said to-day that the Cabinet legislates with the advice and consent of Parliament." Ministers, backed by the weight of vast departments and the best technical advice, have developed such control over the details of measures that Parliament now has much less freedom in amending Bills without implying loss of confidence in the Government. Under normal conditions, indeed, the Commons exert little control over the Cabinet in that once large region lying between criticism and sentence of death. And the threat of a dissolution is a strong weapon in the hands of a Prime Minister for taming a recalcitrant House. Nevertheless, the light of publicity and the fire of criticism that the House of Commons can direct upon a Government is of the utmost importance, and can be even more so given an enlightened vocal public opinion. Upon such things as these does democracy to-day depend for its very existence.

§ 36. **The Administration of Justice.** One of the less prominent but no less important features of the constitutional development of the period from the

first Reform Bill onward has been the entire reconstruction of the whole judicial system of England. Unfortunately the subject is a highly technical one, of which only a meagre sketch can be given here. Generally speaking, justice may be classed as either *criminal or civil*. In theory the king, as the agent for the maintenance of law and order in the country, is the accuser in every criminal action. In the early Middle Ages it was the duty of the sheriff, the king's representative in the shire, to see that all offenders were brought to trial and punished. In Edward III's reign, however, justices of the peace were instituted to deal with this matter. Their work was thoroughly organized by the Tudors. Petty offences were tried by them without a jury. More serious offences *were tried at Quarter Sessions (of the shire court)* before the Commission of the Peace of the county. Important crimes were reserved for the assizes, held periodically, usually three times a year, and presided over by royal justices from the King's Court at Westminster.

In the nineteenth century this system was further developed and extended. In the case of petty offences the procedure was regularized by an Act of Parliament passed in 1848 detailing the offences that might be tried by the justices of the peace and the extent of the punishment that might be inflicted. The courts presided over by the justices of the peace are known as Petty Sessions; they are usually held once a week in a market town or other centre; they can impose punishments only to the extent of a

small fine or a maximum of three months' imprisonment. Appeal can be made from them to Quarter Sessions, and still further to the High Court, if necessary. In the large municipalities this work is done by paid justices known as stipendiary magistrates. The system was introduced into London as early as 1792. After the Municipal Reform Act of 1835 it became possible for any municipal borough to have a stipendiary magistrate if it so desired. In order to get one appointed it must petition the Crown and guarantee the salary of the appointment.

The offences dealt with by the procedure described in the preceding paragraph are known as 'non-indictable.' More serious offences are classified as 'indictable.' The distinction has reference to a method of procedure now no longer used. An indictment was technically an accusation preferred by a grand jury of presentment, the origin of which, as we have seen, dates back to the reign of Henry II. It was the business of this jury to hear only the prosecution evidence and to decide whether there were sufficient grounds for the case to be proceeded with. If so they returned what was known as a 'true bill.' The real trial would then take place in a higher court—*i.e.*, before a petty or a special jury in the High Court in London or at the assizes in a shire town, or it might be dealt with by the justices of the peace in Quarter Sessions. The practice now is for the preliminary charge to be laid in a police court before magistrates, whose duty it is to decide whether the case

shall go forward or not. If they decide that there is a case the accused is at liberty to defend himself in the usual way with the object of persuading the justices that the charge should be dismissed. In the great majority of cases, however, the accused assumes that the prosecution will be proceeded with, and reserves his defence. Since the re-organization of the central Courts of Justice in 1875 all courts except Quarter Sessions which try indictable offences are regarded as branches of the High Court.

Until the year 1907 there was in theory no such thing as appeal from the verdict of a jury in a criminal case. In practice, however, there were methods by which appeals could be made. In 1907 the Court of Criminal Appeal was instituted, consisting of three judges of the High Court empowered to hear criminal appeals and either modify the sentence or quash the original verdict. But they cannot order the retrial of a case. It is under particular circumstances possible for a further appeal to be made from the Court of Criminal Appeal to the House of Lords. Finally, it is possible for the king, acting through the Home Secretary, to stop any criminal trial and pardon any convicted criminal. But this power is exercised subject to the control of Parliament.

With regard to criminal procedure several important points should be borne in mind, since they concern that great constitutional right known as the liberty of the subject. An accused man cannot be forced to give evidence against himself; he need

make no confession or statement other than his reply to the question as to whether he pleads guilty or not guilty. Of course, he may give evidence and make statements if he so desires. Before his trial he must be furnished with an exact statement of the charge or charges against him, and every facility must be given for him to arrange for his defence. The accused man may appeal against the verdict of a jury; as far as the accuser is concerned there is no appeal. No judge may impose a sentence greater than the maximum fixed by law, but within the limits prescribed by the law he is allowed great powers of discretion. A judge cannot be prosecuted for anything said or done by him in the execution of his office. As a private person, however, he is amenable to the ordinary law just like anyone else. This judicial privilege is extended to justices of the peace in Quarter Sessions. If, on the other hand, a judge exceeds his powers, meddles in matters he is not concerned with, or fails in any way to do his duty, he is liable to be punished according to the gravity of his offence. Any judge or justice of the peace convicted of a crime *ipso facto* forfeits his office.

The most important changes in England's judicial system have been made in the sphere of civil jurisdiction. In the first instance, the old county courts have been revived and reorganized. In 1846 five hundred of these courts were set up in England with limited powers of jurisdiction over their districts. It will be at once seen that the term 'county court' has therefore become somewhat misleading, as they

by their very number can have little or no connexion with the county system. They are local courts dealing with claims for debt, breach of contract, and so on in their particular districts. When they were originally created they could only adjudicate claims of the value of £50 and under. Nowadays their jurisdiction extends to claims up to the value of £100. Claims above that amount must be taken to the High Court.

The county courts are presided over by specially appointed judges who go round on circuit, each presiding over several courts. Of recent years their scope has been continually increased by Parliament. It would be out of place here to give a detailed list of all the new cases over which they have jurisdiction. One of the most important examples must suffice: the county court assesses the amount of compensation due, under the terms of the Workmen's Compensation Act, for either the death of, or injury to, a workman.

The more important civil cases are now tried by the High Court of Justice in London, which also hears appeals from the county courts. The High Court was created in 1875 by the amalgamation of all the old courts such as Chancery, the King's Bench, the Common Bench (originally known as the Court of Common Pleas), the Exchequer Court, the Courts of Admiralty, Probate, and Divorce. It thus administers both common law and equity. Its various composite parts have now been reduced to three divisions: (*a*) Chancery, (*b*) King's Bench, and (*c*)

Admiralty, Probate, and Divorce. Under certain conditions appeal may be made to the Court of Appeal and further to the House of Lords.

The House of Lords sitting as an appeal court is composed of only those peers who have held high judicial office and the six Lords of Appeal in Ordinary, who are life peers specially appointed to the House for hearing appeals. These are collectively known as the Law Lords. Theoretically, any of the peers may be present at a hearing, but it is now an established custom that only the Law Lords constitute the House of Lords sitting as a Supreme Court of Appeal.

Finally, as the Supreme Court of Appeal for the British Empire we have the Judicial Committee of the Privy Council. Generally speaking, this only hears appeals from courts outside England. Throughout its entire history the Privy Council has exercised jurisdiction to a varying degree. The Long Parliament swept away its jurisdiction in the Star Chamber, but its position as a court of appeal was not interfered with. When toward the end of the seventeenth century the Privy Council became too large to meet often as a body for judicial business the same thing happened in this respect as in the case of its executive work: a small committee of its members performed the work in the name of the whole body. This haphazard method went on until 1833, when an Act of Parliament definitely created the Judicial Committee of the Privy Council. Since then its composition has been twice altered. Now

it consists of those members who have held high judicial office, the six Lords of Appeal in Ordinary, and a certain number of judges or ex-judges of the Colonial or Indian High Courts. It is often divided up into special 'boards,' but not less than three of its members must be present at the hearing of an appeal. It does not give judgments like other courts, nor like the House of Lords does it decide by a majority vote. Its decisions are unanimous and are in the form of advice tendered to the king. They are therefore promulgated as Orders in Council. So the Judicial Committee of the Privy Council is an important link between England and the Empire —it is the final court of appeal from any and every part of the British Empire.

§ 37. **Local Government.** The system of local government set up by the Tudors was not materially altered until the second half of the nineteenth century. The backbone of the Tudor system was the justice of the peace, controlled by the Privy Council. He saw that the parish performed its due functions, especially in the matter of the Poor Law. He punished the petty offenders and was generally responsible for the maintenance of law and order in his district. In Quarter Sessions with his brother justices he tried more serions crimes, assessed standard wages in all trades and crafts, and practically ruled the country. As time went on Parliament heaped more and more powers and duties upon the justices. In the eighteenth century they were the least corrupt and the most competent body of men in the country.

The dominance of the justice of the peace in local government was quite natural in England before the changes brought about by the Industrial Revolution. England was chiefly an agricultural country, and her civilization was predominantly rural. The country gentleman, therefore, was the leader of local society and the arbiter of local politics, such as they were. But when factories and manufacturing industries ousted agriculture from its time-honoured position, and when new types of society grew up and new problems arose, it became absolutely imperative that the old order should give way before a new one specially devised to cater for the new conditions.

In 1834 the first far-reaching reform of local administration was brought about by the Poor Law Amendment Act, which took the real management of poor relief out of the hands of the parish and placed it under the control of Boards of Guardians representing 'unions' of parishes. The justices of the peace sat upon the Boards of Guardians, but in addition to them were elected representatives of the parishes comprised in the union. Above the Boards of Guardians was a central controlling body known as the Poor Law Commissioners. The functions of this body grew increasingly more important as the new system developed. In 1847 it became the Poor Law Board. Ultimately in 1871 it developed into one of the most important executive departments of government, the Local Government Board. The system of Guardians was devised at a time of reaction against the extravagant Speenhamland

policy. It was based upon the assumption that the able-bodied pauper was himself chiefly to blame for his poverty. A severe policy, therefore, known as "the principles of 1834," was dictated to the Guardians by the central Government, whose administrative control tended to be exceedingly bureaucratic. Very slowly it came to be realized that severe measures were no solution of the problem of poverty. The Boards themselves did much to render the system more humane; but the problem became too complicated to be dealt with by the organization set up in 1834. The Royal Commission appointed in 1905 to report on the whole system of poor relief advised that its administration should be transferred to the ordinary local government bodies and that the Boards of Guardians should be abolished. The Commission's report was published in 1909. Not until 1929, however, were its recommendations embodied in legislation. The Local Government Act of that year abolished Boards of Guardians, made the counties and county boroughs responsible for poor relief, and changed its name to "Public Assistance." The responsible bodies in their turn set up Public Assistance Committees. Some even went so far as to split up the work of caring for the poor between their education, public health, and mental deficiency committees and other departments dealing with public welfare.

In the year following the creation of the unions (1835) the great Municipal Reform Act was passed.

This reduced the government of all municipal boroughs to a uniform basis. Henceforth the corporation was to consist of a mayor, aldermen, and burgesses. Its governing body was to be a council composed of the mayor and aldermen and a number of elected counciliors representing the burgesses. Councillors were to hold office for three years. Aldermen were to be elected by the council for six years, their numbers being one-third of those of the councillors. They were not provided for in the Bill as it originally stood, but were added to it by the House of Lords, which feared lest the elected councils should prove too democratic. The mayor was also to be elected by the council, but was to hold office for only one year at a time. The powers of the new corporations were at first not very great. They were given either complete or partial exemption from the jurisdiction of the county justices of the peace. They administered all the property of their respective boroughs, and saw to the questions of street lighting and watching. As time went on, however, they were given largely increased powers. These they secured partly by private Acts of Parliament, hundreds of which were passed during the period immediately succeeding the Reform Act. But Parliament also has taken the initiative on many occasions. The duties of corporations have been multiplied by such acts as Public Health Acts, Artisans' Dwelling Acts, and Education Acts, or by 'adoptive' Acts providing for such things as public libraries, baths and wash-

houses, etc. An 'adoptive' Act is one which a public body may or may not adopt according as it desires. If it adopts it, it is then bound strictly by the terms of the Act.

Between 1835 and 1882 no fewer than forty different statutes were passed which amended the original Act. In the latter year another Municipal Corporations Act was passed as a consolidating measure. By this time the municipal borough had developed duties and powers of an extremely varied and extensive kind. It imposed rates, regulated public health and sanitation, maintained its own police force, provided and supervised public education, licensed vehicles for public use, controlled traffic, maintained roads, public buildings, street lighting, and public recreation grounds, and enforced such by-laws as it was allowed to pass. Since 1882 the process of handing out new powers to boroughs has necessarily slowed down. They have, however, acquired such minor powers as those of acquiring stipendiary magistrates and appointing inspectors of food and drugs, weights and measures, and diseases of animals.

In the middle of the nineteenth century the great advances made by medical science drew public attention more and more to the question of the prevention of disease. Several deadly outbreaks of cholera led to the passing of a Public Health Act in 1848, which created local sanitary authorities throughout Great Britain. A further Public Health Act in 1872 mapped out the whole of England into

sanitary districts, with a distinction between urban and rural areas. An administrative board was set up in each.

The most important step came in 1894, when a Local Government Act was passed which, besides establishing parish councils, completely reorganized the sanitary districts. Their boards were turned into elected district councils with enlarged scope, powers, and dignity. Their main function was still to administer the Public Health Acts, which had been consolidated by an Act of 1875, and were supplemented by much later legislation. In the course of time urban district councils received many new powers, the larger ones being permitted to undertake municipal trading and duties connected with education, police, and old age pensions. They now perform much the same services as municipal borough councils, but with the important difference that the borough has greater independence in the management of its affairs, a constitution which includes aldermen in addition to democratically elected councillors, and much greater dignity. The chairman of the borough council is a salaried mayor. The urban district council has an unpaid chairman.

Before the operation of the Local Government Act of 1929 both urban and rural district councils were responsible for the maintenance of all highways (except certain highroads) within their areas. There were, however, loud complaints about the inefficiency of the rural sanitary services, and a

Royal Commission (the Onslow Commission), appointed in 1923, reported that the burden of expenditure upon highways was the chief factor in the situation. Hence the Act of 1929 transferred the responsibility for maintaining public highways from the rural districts to the counties. It was also felt that both urban and rural districts were too small and poor to deal adequately with the necessary developments in sanitary services imposed by modern conditions of life. County councils were, therefore, required by the Act to remap their districts and create units large enough to cope with the problem. As a result wealthier urban units took over larger areas in some cases; in others existing rural units were amalgamated. Generally speaking, the new areas are an improvement on the old ones. The system, however, is not yet fixed. The Local Government Act of 1933 makes it possible for a fresh review of boundaries to be undertaken after an interval of ten years.

The Local Government Act of 1894, which reorganized the sanitary authorities, also remodelled the smallest unit of local government, the parish. Every parish with more than three hundred inhabitants was to elect a parish council, which was to take over the civil administration of the parish. The parish councils appoint overseers of the poor, administer the charity funds of the village, maintain and repair footpaths, provide and manage allotments and recreation grounds, and see that the sanitary authorities carry out their duties in their respective

parishes. They may also provide public libraries, cemeteries, baths, washhouses, and street lamps—these latter powers are 'permissive' ones since they are conferred by 'adoptive' Acts.

The modern county administration of England was created by the Local Government Act of 1888. This famous Act set up elected county councils in England and Wales, each representing the urban and rural districts within its respective county. Certain large and populous boroughs, however, were exempted from this and given the status of 'county boroughs.' In this way their borough councils performed the same functions and exercised the same powers as county councils. The Act provided that a town on attaining a population of 50,000 could obtain the status of a county borough if it secured the approval of the Local Government Board (after 1919 the Ministry of Health). Under this system many boroughs have obtained freedom from county control.

County councils have not regarded with equanimity the loss of their wealthiest areas. In fact, they have waged battle royal against it. Their case was heard at length by the Royal Commission on Local Government which was appointed in 1923. As a result the County Boroughs and Adjustments Act of 1926 was passed, which raised the minimum population qualification for a county borough from 50,000 to 70,000 and made certain financial concessions to the counties. The matter is not yet settled. Efficient county administration

is obviously dependent upon adequate financial resources, and it is possible that the ultimate solution should be that of abolishing both counties and county boroughs and substituting a system combining county boroughs and their surrounding rural territory into entirely new provincial units.

The county is the largest unit of local government. It maintains a large permanent staff of officials and supervises the work of all local bodies within its area. The county council has great financial responsibilities, especially in the allocation of grants from the national exchequer made for such specific purposes as education, maintenance of roads, police, etc. It assesses and directs the levy of rates throughout the county, either actually controls or supervises the control of the main roads of the county, provides official buildings for the county, maintains pauper lunatic asylums, administers Acts of Parliament relating to the prevention of contagious diseases of animals, the protection of wild birds, and the maintenance of weights and measures. It controls the education of the county through a specially appointed education committee, and it even provides houses for the working classes in districts where there is a shortage.

London stands outside the normal local administrative framework of the kingdom. The City of London was left untouched by the Municipal Reform Act of 1835. For a long time also it opposed all schemes to reform the huge urban areas which grew up outside its boundaries. In 1855, however,

a Metropolis Management Act was passed, which set up local bodies, known as vestries and district boards, for the areas outside the City, and imposed upon them a central body, the Metropolitan Board of Works, to which the Corporation of the City sent delegates. This body carried out a great system of main drainage and constructed the Victoria Embankment, but lagged behind the governments of some of the greater provincial cities in both powers and functions.

After lengthy and extremely spirited controversy, and the appointment of two Royal Commissions, a great new departure was taken by the Local Government Act of 1888, which set up the London County Council in place of the Metropolitan Board of Works. The local independence of the Corporation of the City was, however, safeguarded. In due course the vestries and district boards were abolished, and twenty-eight metropolitan boroughs, organized on the lines of municipal boroughs, set up. They differ from municipal boroughs, however, in that the members of their councils all retire together every three years, and aldermen number only one-sixth of the elected councillors. The L.C.C., also, has greater powers and a somewhat wider scope of activities than ordinary county councils. On the other hand, the Local Government Act of 1929 empowers the Ministry of Health to transfer county powers to metropolitan boroughs under certain conditions.

The Corporation of the City of London still

retains much of its medieval constitution. Its upper house, the Court of Aldermen, is elected on a democratic franchise, one member for each of the twenty-six wards. Once elected, an alderman sits for life. The Common Council of over two hundred members is elected annually. So also is the Lord Mayor. His electors are the City livery companies, the aldermen, the retiring Mayor, and the sheriffs. The City's powers, based on ancient charters, extend in certain cases beyond its boundaries. For instance, it controls all markets within seven miles of its boundaries. Its Lord Mayor during his year of office occupies a unique position in the national life.

The history of the local government franchise, though full of interest, can only be touched on here. Before the Act of 1835 the borough franchise varied from borough to borough in accordance with the arrangements set forth in each individual charter. In the parishes ratepayers had certain rights recognized as "immemorial." They could attend vestry meetings and vote on decisions. In 1819 the principle of election was introduced into parishes by a Select Vestry Act, which empowered ratepayers to elect a committee annually for the administration of the Poor Law. Another Act in 1831 established parish councils elected by ratepayers, and permitted women who actually paid rates to vote. The ratepayers also elected the Boards of Guardians set up in 1835 and the municipal councils set up in the following year. Nowadays

local elections are governed by the Representation of the People Act of 1918 and the Equal Franchise Act of 1928. Subject to the same disqualifications as in the case of Parliamentary elections, all occupiers, male and female, of three months' standing qualify for the vote, if they have attained the age of twenty-one. The wives of male electors and the husbands of female ones also qualify. Such are the general principles. In practice, however, there is a considerable amount of detail to be applied.

Perhaps the most striking fact about our present local institutions is their newness. Almost within the last half-century the system has undergone so complete a change that it is difficult as yet to see local government in its proper perspective. A vast amount of devolution has been carried out. On the other hand, the fact that it is now recognized that many matters of local government are also matters of national concern is likely to lead to greater, and *not less, central interference*. And it is somewhat disturbing to find the ordinary citizen showing comparatively little interest in the government of his own locality. In this modern world of intense centralization it is not surprising to hear the words 'doomed' and 'anachronistic' being applied by some people to local government as it exists at present. Most people would agree that the system produces satisfactory results, and has developed a reasonably high standard of administrative efficiency. And the establishment of a

well-organized Civil Service is likely to have an important effect upon future progress. Where local patriotism is strong the best results are undoubtedly achieved. One of the greatest needs of the moment would, therefore, seem to be better provision for the teaching of 'citizenship.' Is it too much to ask that the study of local government, as something intimately affecting their daily lives, should be made available to all young people before they leave school? Ignorance of the subject on the part of the ordinary citizen is probably the chief cause of the defects in the working of local institutions, as also of the doubts regarding their future which assail some modern observers.

Suggestions for Further Reading

The best introduction to the literature of the subject is *A Short Bibliography of English Constitutional History*, by Helen M Cam and A. S. Turberville (published for the Historical Association by G. Bell and Sons, Ltd, 1929). As this is cheap and easily procurable, readers are referred to it for all books published up to that date. The following list is devoted entirely to works which have appeared subsequently.

(*A*) *GENERAL WORKS*

Allison, W. H, Fay, S B, Shearer, A. H., and Shipman, H R · *A Guide to Historical Literature* (Macmillan, 1930).

Valuable for consitutional history

Paetow, L J. *A Guide to the Study of Medieval History* (Kegan Paul, 1931).

Morris, W A. *Constitutional History of England to 1216* (Macmillan, 1930)

Jolliffe, J. E. A. *The Constitutional History of Medieval England* (Black, 1937)

A brilliant study, especially of the Saxon period The book, however, suffers by omitting ecclesiastical affairs from its scope

Keir, D. L. : *The Constitutional History of Modern Britain* (Black, 1938).

Firth, Sir Charles: *A Commentary on Macaulay's "History of England"* (Macmillan, 1938)

CLARK, G. N. (editor): *The Oxford History of England* (Oxford University Press, 14 vols., 1934, etc.).

Very useful for the student of constitutional history. The last volume, *England, 1870–1914*, by R. C. K. Ensor, is a masterly survey of the period.

(B) SPECIAL STUDIES

JOLLIFFE, J. E. A.: *Pre-Feudal England: The Jutes* (Oxford University Press, 1933).

An important piece of research.

TAIT, J.: *The Medieval English Borough* (Manchester University Press, 1936).

The most important book on pre-Conquest towns.

POWICKE, F. M. (editor): *Oxford Essays in Medieval History presented to H. E. Salter* (Oxford University Press, 1934).

Some important studies of constitutional subjects.

PETIT-DUTAILLIS, C., and LEFEBRE, G.: *Studies and Notes Supplementary to Stubbs's "Constitutional History,"* vol. iii (Manchester University Press, 1929).

Final instalment of the work mentioned in Cam and Turberville's *Bibliography* (p. 4) and translated by M. I. E. Robertson and R. F. Treharne.

CAM, H. M.: *The Hundred and Hundred Rolls* (Methuen, 1930).

A good study of English local government in the Middle Ages

LATHAM, L. C.: *The Manor* (Historical Association Pamphlet, Bell, 1931).

Very useful introductory sketch.

MAITLAND, F. W.: *Selected Essays* (edited by D. H. Hazeltine, G. Lapsley, and P. H. Winfield; Cambridge University Press, 1936).

PETIT-DUTAILLIS, C.: *Feudal Monarchy in France and England from the Tenth to the Thirteenth Centuries* (Kegan Paul, 1933).

Interesting interpretation of the medieval monarchy, but restates the out-of-date view of Magna Carta.

The Collected Papers of T. F. Tout (3 vols., Manchester University Press, 1933).

Some of Professor Tout's most important medieval studies.

CHEW, H. M.: *The English Ecclesiastical Tenants-in-chief and Knight Service* (Oxford University Press, 1932).

TREHARNE, R. F.: *The Baronial Plan of Reform* (Manchester University Press, 1932).

MCKISACK, M.: *The Parliamentary Representation of the English Boroughs during the Middle Ages* (Oxford University Press, 1932).

GRAY, H. L.: *The Influence of the Commons on Early Legislation* (Oxford University Press, 1932).

TOUT, T. F.: *The Place of the Reign of Edward II in English History* (second edition, revised by Hilda Johnstone; Manchester University Press, 1937).

CLARKE, M. V.: *Medieval Representation and Consent* (Longmans, 1937).

WEINBAUM, M.: *The Incorporation of Boroughs* (Manchester University Press, 1937).

Learned essay on borough charters from the fourteenth to the eighteenth centuries

WEDGWOOD, J. C., and HOLT, ANNIE D: *Biographies of the Members of the Commons House, 1439–1509* (H.M. Stationery Office, 1936)

The first volume of a gigantic *History of Parliament, 1264–1918*, planned to run to about forty volumes

POLLARD, A. F.: *Wolsey* (Longmans, 1929).

Of prime importance to students of constitutional history

POLLARD, A. F.: *Factors in Modern History* (third edition, Constable, 1932).

Very stimulating.

HIGHAM, F. M. G.: *Charles I: A Study* (Hamish Hamilton, 1932).

Trustworthy modern interpretation

MARRIOTT, J. A. R.: *The Crisis of English Liberty* (Oxford University Press, 1930).

A survey of seventeenth-century constitutional struggles

TREVELYAN, G. M.: *England under Queen Anne* (3 vols., Longmans, 1936).

TURNER, E. R.: *The Cabinet Council of England in the Seventeenth and Eighteenth Centuries, 1622–1784* (2 vols., Oxford University Press, 1930 and 1932).

THOMSON, M. A.: *The Secretaries of State, 1681–1782* (Oxford University Press, 1932).

OLIVER, F. S.: *The Endless Adventure, 1710–35* (3 vols., Macmillan, 1929, 1931, and 1935).

A brilliant essay upon Walpole.

NAMIER, L. B.: *The Structure of Politics at the Accession of George III* (2 vols., Macmillan, 1929).

—— *England in the Age of the American Revolution* (Macmillan, 1930).

These two works by Namier are of first-rate importance.

FEILING, K. G.: *The Second Tory Party, 1714–1832* (Macmillan, 1938).

ASPINALL, A.: *Letters of King George IV* (3 vols., Cambridge University Press, 1938)

CLARK, G. KITSON: *Peel and the Conservative Party, 1832–1841* (Bell, 1932).

Valuable research work resulting in some modification of views generally held.

PLUCKNETT, T. F. T.: *Concise History of the Common Law* (Butterworth, 1936).

Valuable for students of constitutional history.

JENNINGS, W. I.: *Cabinet Government* (Cambridge University Press, 1936).

Indispensable for the last hundred years

GUEDALLA, P.: *The Queen and Mr Gladstone* (2 vols., Hodder and Stoughton, 1933).

Indispensable for an understanding of the nineteenth-century monarchy.

BUCKLE, G. E. (editor): *The Letters of Queen Victoria: Third Series* (1886–1901) (3 vols., Murray, 1930–32).

SPENDER, J. A., and ASQUITH, C.: *Life of Herbert Henry Asquith, Earl of Oxford* (2 vols., Hutchinson, 1932)

TILLEY, SIR JOHN, and GASELEE, SIR STEPHEN: *The Foreign Office* (Putnam, 1933).

Much valuable information regarding post-War diplomatic organization

JENNINGS, W. I.: *The Law and the Constitution* (University of London Press, 1933).

HASLUCK, E. L. *Local Government in England* (Cambridge University Press, 1936).

BUTTERFIELD, H. *The Whig Interpretation of History* (Bell, 1931).

EMDEN, C. S.: *The People and the Constitution* (Oxford University Press, 1933).

WADE, E. C. S., and PHILLIPS, G. G.: *Constitutional Law* (revised edition, Longmans, 1933).

KEIR, D. L., and LAWSON, F. H.: *Cases in Constitutional Law* (revised edition, Oxford University Press, 1933)

STEPHENSON, C., and MARCHAM, F. G. *Sources of English Constitutional History* (Harrap, 1938).

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